

GOVERNMENT OF ZAMBIA

ACT**No. 11 of 2008**

Date of Assent: 24th September, 2008

An Act to provide for the prohibition, prevention and prosecution of human trafficking; provide for the filing of and dealing with matters related to human trafficking; establish the Committee on Human Trafficking and provide for its powers and functions; establish centres for victims of human trafficking; establish the Human Trafficking Fund; domesticate the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime; and provide for matters connected with or incidental to the foregoing.

[26th September, 2008]

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Anti-Human Trafficking Act, 2008.

Short title

2. (1) In this Act, unless the context otherwise requires—
“abuse of vulnerability” in relation to trafficking, means such physical or psychological abuse that leads a person to believe that the person has no reasonable alternative but to submit to exploitation, and is not limited to taking advantage of the vulnerabilities of that person resulting from—

Interpretation

- (a) the person having entered Zambia 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 judgments by virtue of being a child;

“centre for victims” means a facility for the provision of temporary accommodation in accordance with a programme referred to in sections *forty-two and forty-three* suited for the needs of victims admitted to the facility;

“child” means a person under the age of eighteen years;

“child labour” includes all forms of slavery or practices similar to slavery such as—

- (a) the sale of a child;
- (b) trafficking of a child for the purpose of engaging the child in work away from home and from the care of the child’s family, in circumstances within which the child is exploited;
- (c) debt bondage or any other form of bonded labour;
- (d) serfdom; and
- (e) forced or compulsory labour, including forced or compulsory recruitment of a child for use in armed conflict;

“coercion” means violent psychological coercion and other forms of non violent psychological coercion such as—

- (a) a threat of serious harm to a person or another person;
- (b) any scheme, plan or pattern; or
- (c) the abuse or threatened abuse of the legal process; intended to cause a person to believe that, if the person does not perform labour or provide a service, the person or another person will suffer serious harm;

“Committee” means the Committee on Human Trafficking established under section *one hundred*;

“debt bondage” means the status or condition that arises from a pledge by a person—

- (a) of the person’s personal services; or
- (b) of the personal services of another person under that person’s control;

as security for a debt owed, or claimed to be owed, including any debt incurred or claimed to be incurred after the pledge is given, by that person if—

- (i) the debt owed or claimed to be owed is manifestly excessive;
- (ii) the value of those services as reasonably assessed is not applied toward the liquidation of the debt or purported debt; or
- (iii) the length and nature of those services are not respectively limited and defined;

THE ANTI-HUMAN TRAFFICKING ACT, 2008**ARRANGEMENT OF SECTIONS****PART I****PRELIMINARY***Section*

1. Short title
2. Interpretation

PART II**PROHIBITION OF HUMAN TRAFFICKING**

3. Prohibition of trafficking in persons
4. Debt bondage
5. Prohibition of destruction, confiscation, possession and concealment of documents
6. Using the services of victim
7. Conduct facilitating trafficking in persons
8. Internet service provider to report trafficking sites
9. Smuggling of persons
10. Harboursing, concealing, etc. of offender
11. Aiding, abetting, etc., of offender
12. Attempts to commit offence
13. Offences by institution
14. Directing institution engaged in offence under Act
15. Fundraising and other support
16. Use and possession of property in furtherance of offence under Act
17. Assisting in retention or control of funds for commission of offence under Act
18. Support services for offences under Act
19. Money laundering
20. Co operation with police officers
21. Non defences

PART III**IDENTIFICATION AND PROTECTION OF VICTIM**

22. Guiding principles when deciding question whether person is victim
23. Declaring country as country of origin or destination
24. Director of Public Prosecutions to decide whether victim should be

prosecuted

25. Reporting and referral of victim
26. Filing of complaint with police officer
27. Police assistance
28. Receipt of complaint by police officer
29. Arrest by police officer
30. Arrest without warrant by private person
31. Child who is victim found in Zambia
32. Deportation of victim prohibited
33. Suspension of deportation
34. Temporary residency
35. Permanent residency
36. Repatriation of victim from Zambia
37. Assistance to foreign victim
38. Repatriation of victim to Zambia
39. Escorting of child victim

PART IV

CENTRES FOR VICTIMS

40. Establishment of centres for victims
41. Minimum norms and standards
42. Programme offered by centre for child victims
43. Programme offered by centre for adult victims
44. Assessment of victim
45. Tracing of family of trafficked person
46. Rehabilitation of victim
47. Provision of health care

PART V

FORFEITURE OF PROCEEDS OF HUMAN TRAFFICKING

48. Interpretation
49. Attachment of property
50. Property tracking
51. Seizure and detention of funds used in furtherance of offence under
Act
52. Forfeiture
53. Implementation of forfeiture orders
54. Remuneration of receiver
55. Certificate to forfeiture
56. Protection of creditors

57. Protection of insolvency

PART VI
COMPENSATION

58. Compensation to victim
59. Compensation to State
60. Payment of compensation
61. Recovery of compensation
62. Failure to make compensation

PART VII
INVESTIGATIONS

63. Power to obtain financial information
64. Procedure
65. Criteria for order
66. Meaning of financial institution
67. Customer information
68. Disclosure of information

PART VIII
PORT AND BORDER CONTROLS

69. Port and border controls
70. Interpretation
71. Information
72. Questioning
73. Stopping of persons and vehicle
74. Searching of vessels and aircraft
75. Searching of persons
76. Examining of goods
77. Detention of property
78. Designation of control area
79. Control area facilities
80. Information cards
81. Information from owner of vessel or aircraft
82. Legitimacy and validity of documents
83. Offences

PART IX
DEPORTATION ORDERS

84. Making and effect of deportation orders
85. Duration
86. Notice of order
87. Directions for removal
88. Detention pending removal
89. Provisions supplementary to detention

90. Offences in connection with deportation order

PART X
MUTUAL LEGAL ASSISTANCE AND EXTRADITION

91. Exchange of information
92. Other requests from foreign States
93. Requests to foreign States
94. Form of request
95. Extradition

PART XI
PREVENTION OF TRAFFICKING IN PERSONS

96. Public awareness
97. Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child
98. International co operation
99. Extra territorial jurisdiction

PART XII
COMMITTEE ON HUMAN TRAFFICKING

100. Establishment of Committee on Human Trafficking
101. Functions of Committee

PART XIII
HUMAN TRAFFICKING FUND

102. Establishment of Fund
103. Administration and management of Fund
104. Accounts and audit
105. Statement of income and expenditure

PART XIV
GENERAL PROVISIONS

106. Powers to stop and search
107. Evidence
108. Rules of court
109. Proceedings in camera
110. Regulations

FIRST SCHEDULE—Committee on Human Trafficking

“Director of Public Prosecutions” means the person appointed as such under the Constitution;

“exploitation” includes—

Cap. 1

(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; and

(f) the removal of body parts contrary to the Human Tissue Act;

Cap. 306

“forced labour” means labour or services obtained or maintained through threats, the use of force, intimidation or other forms of coercion or physical restraint;

“Fund” means the Human Trafficking Fund established under section *one hundred and two*;

“guardian” in relation to a child, includes any person who has, for the time being, the charge of or control over the child;

“immigration officer” has the meaning assigned to it under the Immigration and Deportation Act;

“labour inspector” has the meaning assigned to it under the Employment Act;

Cap. 123

“legal practitioner” has the meaning assigned to it in the Legal Practitioners Act;

Cap. 268

“medical practitioner” means a person registered as such under the Medical and Allied Professions Act;

Cap. 30

“parent” includes guardian;

“person” includes a partnership;

Cap. 297

“police officer” has the meaning assigned to it under the Zambia Police Act;

Cap. 107

“practices similar to slavery” include—

(a) debt bondage;

(b) serfdom;

(c) any institution in which, or practice under which—

(i) a woman who does not have the right to refuse is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person;

(ii) the husband of a woman, his family or his clan has the right to transfer her to another person for value received or otherwise; or

(iii) a woman, on the death of her husband, is liable to be inherited by any other person; or

(d) any institution in which, or practice under which a child is delivered by either one or both of the child's natural parents or by the child's guardian to another person, whether for reward or not, for the purpose of the exploitation of the child;

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

"Protocol" means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

"public officer" means a person serving in the Public Service;

Cap. 260

"Public Service" has the meaning assigned to it in the Public Service Pensions Act;

"servitude" means a condition in which the labour or services of a person are provided or obtained through threats of serious harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person does not perform such labour or services, that person or another person would suffer serious harm;

"sexual exploitation" means the participation of a person in prostitution or other sexual acts, or the production of pornographic material as a result of being subjected to threat, force, intimidation or other forms of coercion or any other practice in terms of which it cannot be said that the person participated voluntarily;

"slavery" means the exercise of any or all of the powers attaching to the right of ownership over a person;

"smuggling" means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or permanent resident;

"traffic" means to recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia, by means of—

(a) any threat or use of force or other forms of coercion;

(b) abduction;

(c) fraud or deception;

Cap. 54

(d) false or illegal adoption of a child contrary to the Adoption Act or any other written law;

(e) the destruction, concealment, removal, confiscation or possession of any passport, immigration document or other official identification document of a person;

(f) the abuse or threatened abuse of the law or legal process or any other form of abuse of power or of a position of vulnerability; or

(g) the giving or receiving of payments or benefits to achieve the consent of the person;

for the purpose of exploitation;

“victim” means a person who has suffered 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;

“welfare officer” means a social welfare officer employed in the public service; and

“worst forms of labour” has the meaning assigned to it under the Employment of Young Persons and Children Act.

Cap. 274

PART II

PROHIBITION OF TRAFFICKING

3. (1) Subject to subsections (2) to (11), a person who intentionally and unlawfully trafficks another person commits an offence and is liable, upon conviction, to imprisonment for a term of not less than twenty years and not exceeding thirty-years.

Prohibition
of
trafficking in
persons

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

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

(4) Where the victim is trafficked for the purpose of engaging the victim in the worst forms of labour or child labour, the offender is liable to imprisonment for a term of not less than twenty-years and not exceeding thirty-five years.

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

(6) Where the trafficking results in the death or grievous bodily harm of a victim, the offender may be liable to imprisonment for life.

(7) Where the offender is the natural parent, guardian or any other person who has parental responsibilities and rights in respect of a child and the offender trafficked or permitted the trafficking of the child, the offender is liable to imprisonment for a term of not less than twenty-five years and not exceeding thirty-five years.

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

(9) 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 to imprisonment for a term of not less than twenty-five years and not exceeding thirty-five years.

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

Cap. 306

(11) Where the victim is trafficked for the purpose of the removal of the victim's body parts contrary to the Human Tissue Act, the offender is liable to imprisonment for a term of not less than twenty-five years and not exceeding thirty-five years.

(12) 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.

(13) Subsection (12) does not exclude the liability of an employee or agent of or any other person acting on behalf of the employer or principal for committing the offence of trafficking in persons.

(14) 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.

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

Debt
bondage

5. A person who intentionally and unlawfully destroys, confiscates, possesses, conceals or tampers with any actual or purported identification document, passport or other travel document of a victim in furtherance of the offence of trafficking in persons commits an offence and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty five years.

Prohibition
of
destruction,
confiscation,
possession
and
concealment
of
documents

6. (1) A person who intentionally and unlawfully benefits, financially or otherwise, from the services of a victim or who uses or enables another person's usage of the services of a victim commits an offence and is liable, upon conviction, to imprisonment for a term of not less than ten years and not exceeding twenty-five years.

Using
services of
victim

(2) Where the services used or procured constitute—

(a) sexual exploitation; or

(b) the worst forms of labour;

the offender is liable to imprisonment for a term of not less than fifteen years and not exceeding twenty-five years.

7. (1) A person who—

(a) transports a victim or is in charge of a conveyance which facilitates any offence under this Act;

(b) intentionally and unlawfully leases or subleases or allows any room, house, building or premises to be used for the purpose of harbouring a victim; or

(c) advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcast or distribution of information that suggests or alludes to trafficking by any means, including the use of the Internet or other information technology;

Conduct
facilitating
trafficking
in persons

commits an offence and is liable, upon conviction to the same penalties as if the person had been convicted of the offence.

(2) It shall be a defence for a person charged with an offence under subsection (1) to satisfy the court that that person did not know and had no reasonable cause to believe that the premises leased or sublet were being used for the purpose of facilitating the commission of an offence under this Act.

Internet
service
provided to
report
trafficking
sites

8. (1) An Internet service provided operating in Zambia and who becomes aware of any site on its server that contains information in contravention of paragraph (c) of subsection (1) of section *seven* shall report to the police.

(2) An Internet service provider who fails to comply with the provisions of subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Smuggling of
persons

9. (1) Subject to subsection (2), a person who smuggles another person into or out of Zambia, participates in smuggling or who consents to being smuggled commits an offence and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty years.

(2) Where the smuggling results in the death of the person being smuggled, the offender may be liable to imprisonment for life.

(3) A person who produces, provides, procures or possesses a fraudulent travel or identity document in furtherance of the offence of smuggling commits an offence and is liable, upon conviction, to imprisonment for a term of not less than ten years and not exceeding fifteen years.

Harbouring,
concealing,
etc. of
offender

10. A person who harbours, conceals or provides a safe haven to any person who commits an offence under this Act, commits an offence and is liable, upon conviction, to imprisonment for a term of not less than two years and not exceeding five years.

Aiding,
abetting, etc.
of offender

11. A person who aids, abets, counsels, procures, incites or solicits the commission of an offence under this Act, commits an offence and is liable, upon conviction, to the same penalties as if the person had been convicted of the offence.

Attempts to
commit
offence

12. A person who attempts to commit an offence under this Act commits an offence and is liable, upon conviction, to imprisonment for a term of not less than ten years and not exceeding twenty years.

Offences by
institution

13. (1) Where an offence is committed by an institution and it is proved that the offence—

(a) was committed with the consent or connivance of an officer of the institution; or

(b) was attributable to neglect on the part of an officer of the institution;

the officer and the institution shall be guilty of the offence.

(2) In this section —

(a) in the case of an institution which is a body corporate, “officer” includes—

- (i) a director, manager or Secretary;
- (ii) a person purporting to act as a director, manager or Secretary;
- (iii) if the affairs of the body are managed by its members, a member; and
- (iv) any other person concerned in the management of the body corporate;

(b) in the case of an institution which is a partnership, “officer” means a partner; and

(c) in the case of an institution which is an unincorporate body other than a partnership, “officer” means a person concerned in the management or control of the institution.

14. A person who directs the activities of an institution which is involved in the commission of an offence under this Act commits an offence and is liable, upon conviction, to the same penalties as if the person had been convicted of the offence.

Directing
institution
engaged in
offence
under Act

15. (1) A person who—

(a) invites another to provide or make available money or other property; and

(b) intends that any money or other property should be used for the furtherance of an offence under this Act;

commits an offence and is liable, upon conviction, to the same penalties as if the person had been convicted of the offence.

Fundraising
and other
support

(2) A person who—

(a) provides or makes available money or other property; and

(b) knows that the money or other property shall or may be used for the furtherance of an offence under this Act;

commits an offence and is liable, upon conviction, to the same penalties as if the person had been convicted of the offence.

(3) A reference in this section to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

16. (1) A person who knowingly uses, or who causes or permits any other person to use, money or other property for the furtherance of an offence under this Act commits an offence and is liable, upon conviction, to the same penalties as if the person had been convicted of the offence.

Use and
possession of
property in
furtherance
of offence
under Act

(2) A person who possesses money or other property and intends that it should be used for the furtherance of an offence under this Act, commits an offence and is liable, upon conviction, to the same penalties as if the person had been convicted of the offence.

Assisting in
retention or
control of
funds
for
commission
of offence
under Act

17. (1) A person who enters into or becomes involved in an arrangement whereby the retention or control by, or on behalf of, another person of funds for the furtherance of an offence under this Act is facilitated—

- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees; or
- (d) in any other way;

commits an offence and is liable, upon conviction, to imprisonment for a term of not less than ten years and not exceeding twenty years.

(2) It is a defence for a person charged with an offence under this section to satisfy the court that the person did not know and had no reasonable cause to suspect that the arrangement related to funds for the furtherance of an offence under this Act.

(3) In this section, “funds for the furtherance of an offence under this Act” means—

- (a) funds which may be applied or used for the commission of, in furtherance of or in connection with, offences against this Act; or
- (b) the proceeds of the commission of offences under this Act or of activities in furtherance of or in connection with such offences.

Support
services
for offences
under Act

18. A person who provides or makes available, or offers to provide or make available—

- (a) a financial service or any service for the safe keeping of any property;
- (b) any forged or falsified document;
- (c) access to any premises, vehicle, vessel, aircraft or place;
- (d) access to any communications equipment or capability;
- or
- (e) any services, skill or expertise of any kind;

intending that the same should be used, or having reasonable cause to suspect that that it will be used for the furtherance of an offence under this Act, commits an offence and is liable, upon conviction, to the same penalties as if the person had been convicted of the offence.

19. (1) A person who—

Money
laundering

- (a) engages directly or indirectly, in a business transaction that involves any property acquired with the proceeds of an offence under this Act;
- (b) receives, is in the possession of, conceals, disguises, disposes of or brings into Zambia any property derived or realised directly or indirectly from an offence under this Act; or
- (c) retains or acquires any property knowing that the property is derived or realised, directly or indirectly, from an offence under this Act;

commits an offence and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty years.

(2) In this section, “proceeds of an offence” means any property, benefit or advantage within or outside Zambia realised or derived, directly or indirectly from an offence under this Act.

20. (1) Subject to subsection (2), a person does not commit an offence under any of the provisions of this Part by involvement in a transaction or arrangement relating to money or other property if, as soon as practicable after becoming involved in the transaction or arrangement, and on that person’s own initiative, the person discloses to a police officer—

Co-
operation
with
police
officer

- (a) the person’s suspicion or belief that the money or other property is for the furtherance of an offence under this Act; and
- (b) the information on which that person’s suspicion or belief is based.

(2) Subsection (1) does not apply to a person if—

- (a) a police officer forbids the person to continue the person’s involvement in the transaction or arrangement to which the disclosure relates; and
- (b) the person continues that person’s involvement.

(3) It is a defence for a person charged with an offence under sections *fifteen* to *eighteen* to satisfy the court on a balance of probabilities that —

- (a) the person intended to make a disclosure of the kind referred to in subsection (1); and
- (b) there is a reasonable excuse for the person’s failure to make a disclosure.

(4) Where a person is in employment and the person’s employer has established procedures for the making of disclosures

that may be made to a police officer under subsection (1), this section shall have effect in relation to that person as if a reference in this section to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

(5) A person shall not be subject to any liability for making a disclosure in accordance with this Act and no action, claim or demand shall be taken, made against or of, the person for making the disclosure.

(6) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure, whether or not imposed by any written law, applicable to a person.

(7) A person who makes a disclosure in accordance with this Act—

(a) has a defence of absolute privilege in respect of the publication to the police officer of the disclosure in proceedings for defamation;

(b) on whom a provision of any written law other than this Act, imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against that written law;

(c) who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the disclosure, is taken not to have breached the oath, rule of law or practice or a law relevant to the oath, rule or practice; and

(d) is not liable to disciplinary action because of the disclosure.

Non
defences

21. It shall not be a defence to a charge for an offence under this Act to prove—

(a) that a victim consented to the act constituting the offence;

(b) that the victim had previously engaged in prostitution, or has any other history of a sexual or criminal nature;

(c) where the victim is a child, that the victim, the parent, guardian or other person who has parental responsibilities and rights in respect of the child consented to the act constituting the offence;

(d) that the exploitation of the victim did not occur; or

(e) that the act constituting the offence is a customary practice.

PART III
IDENTIFICATION AND PROTECTION OF VICTIM

22. When deciding the question as to whether a person is a victim, regard shall be had to all the circumstances of the particular case, including such of the following guiding principles as may be relevant in a particular case:

Guiding principles when deciding question whether person is victim

- (a) whether the person is in an exploitative situation through one or more of the following means:
 - (i) violence, force, coercion, intimidation or threats;
 - (ii) threats of violence against the person's family members or friends;
 - (iii) threats of witchcraft to prevent the person from escaping or to keep control over that person;
 - (iv) forcing the person to use drugs or causing the person to be addicted to drugs as a means of controlling that person or to make that person dependent on the traffickers;
 - (v) photographing or video taping the person while participating in sexual activities or other illegal activities for the purpose of threatening that person with exposure to friends, family members or the authorities if the person fails to submit to the demands of the traffickers;
 - (vi) forcing the person to witness the beating, rape or murder of another person as a demonstration of what will happen to the person if the person fails to obey the traffickers; or
 - (vii) threatening the person with arrest by the police for being illegally in the country or for offences committed as a direct result of the person's situation as a victim;
- (b) whether the movement of the person is restricted through one or more of the following means:
 - (i) keeping the person under surveillance when taken to a doctor, hospital or clinic for treatment;
 - (ii) not allowing a person working at a brothel or similar establishment in Zambia or elsewhere to leave the premises unless accompanied by the trafficker or the trafficker's associates;
 - (iii) transporting the person between the person's place of employment and living quarters under the surveillance of a guard; or

- (iv) keeping the person behind closed doors, under guard or electronic surveillance;
- (c) whether the person suffers from one or more of the following health conditions:
 - (i) signs of rape or other forms of sexual exploitation;
 - (ii) emotional distress or psychological manifestations of trauma such as depression, anxiety, post traumatic stress and self inflicted injuries;
 - (iii) bruises, burns, broken bones or other signs of physical abuse;
 - (iv) forced abortions;
 - (v) untreated illnesses or infections; or
 - (vi) malnutrition and poor personal hygiene;
- (d) whether the passport, identity document or other travel document of the person has been destroyed by or is in the possession of another person;
- (e) whether the person is in possession of a fraudulent passport, identity document or other travel document;
- (f) whether evidence exists that the person has been forced to lie to the person's family or friends about the person's safety, well being and whereabouts;
- (g) whether the person has been subjected to debt bondage;
- (h) whether the person has been forced to work whilst earning little, if any, money; and
- (i) whether the person has been required to do work that is different than originally promised to that person.

Declaring
country
as country
of origin or
destination

23. (1) The Minister may, by statutory instrument, declare a country as a country of—

- (a) origin from where persons are being trafficked to Zambia; or
- (b) destination to which persons present in Zambia are being trafficked.

(2) The Minister shall develop a screening mechanism in order to determine whether the following persons are victims:

- (a) persons who travel to Zambia from a country declared as a country of origin in terms of paragraph (a) of subsection (1); and
- (b) persons who travel from Zambia to a country declared as a country of destination in terms of paragraph (b) of subsection (1).

24. The decision as to whether criminal proceedings should be instituted against a victim for an offence committed as a direct result of the victim's situation as a victim shall rest with the Director of Public Prosecutions.

Director of
Public
Prosecutions
to decide
whether
victim
should be
prosecuted

(2) No prosecution for an offence referred to in subsection (1) may be instituted without the written authority of the Director of Public Prosecutions.

25. (1) An immigration officer, labour inspector, social worker, medical practitioner or nurse who has reasonable grounds to believe that a person is a victim shall report to a police officer.

Reporting
and
referral of
victim

(2) A person who has reasonable grounds to believe that another person is a victim shall report to a police officer.

(3) A police officer who has reasonable grounds to believe that a person is a victim or to whom a report has been made in terms of subsection (1) or (2)—

(a) shall—

- (i) make an initial assessment of the report;
- (ii) unless the report is frivolous or materially unfounded, without delay, investigate the truthfulness of the report or cause it to be investigated; and
- (iii) if the report is substantiated by an investigation conducted under subparagraph (ii), without delay, ensure the safety of the victim if the victim's safety is at risk; and

(b) shall, upon substantiation of the report, refer the victim

- (i) if the victim is a child, to a designated social worker for investigation; or
- (ii) if the victim is an adult, to a centre for adult victims.

(4) The identity of a person who makes a report in terms of subsection (1) or (2) shall be kept confidential, unless the interests of justice require otherwise.

(5) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

26. (1) A victim or any person with information concerning the commission of an offence under this Act may file a complaint with a police officer at the place where —

Filing of
complaint
with
police
officer

- (a) the offender resides;
- (b) the victim resides;
- (c) the offence occurred or is occurring; or
- (d) the victim is residing temporarily, if the victim has left the victim's normal place of abode.

(2) A child may be assisted by a next friend to file a complaint concerning the commission of an offence under this Act.

(3) Where a victim is for any reason unable to file a complaint personally, a member of the victim's family or any person with knowledge of the offence may file a complaint on behalf of the victim.

(4) Where a person who could have been a complainant under this Act has died, the complaint may be made by any person with knowledge of the offence.

Police
assistance

27. (1) A police officer shall respond to a request by any person for assistance from an offence under this Act and shall offer protection to the person whether the person reporting is the victim or not.

(2) A police officer who fails to respond to a request for assistance shall be subject to the police service disciplinary action.

Receipt of
complaint
by police
officer

28. Where a police officer receives a complaint, the police officer shall—

- (a) interview the parties and witnesses to the offence including children;
- (b) record the complaint in detail and provide a copy of the written report to the victim;
- (c) assist the victim to obtain medical treatment where necessary;
- (d) assist the victim to a place of safety if the victim expresses concern about safety; and
- (e) inform the victim of their rights and any basic support which may be available to assist the victim.

Arrest by
police officer

29. (1) A police officer may arrest a person for an offence under this Act with or without a warrant issued under this Act.

(2) A police officer may arrest a person for—
an offence under this Act without a warrant where

- (a) the offence is committed in the presence of the police officer;
- (b) the police officer is obstructed by the person in the execution of police duties; or
- (c) the person has escaped or attempts to escape from lawful custody.

(3) A police officer may arrest a person without warrant where the police officer has reasonable grounds to believe that the person—

(a) has committed an offence under this Act;

(b) is about to commit an offence under this Act and there is no other way to prevent the commission of the offence; or

(c) is willfully obstructing the police officer in the execution of police duties.

30. (1) A private person may arrest a person without warrant if the person commits an offence under this Act in the presence of the private person.

Arrest
without
warrant by
private
person

(2) A private person may arrest a person without warrant where the private person has reasonable suspicion that the person has committed an offence under this Act.

(3) A private person who effects an arrest shall immediately hand over the person to the police.

31. (1) A child who is a victim may be placed in temporary safe care, pending an investigation.

Child who is
victim found
in Zambia

(2) If, after an investigation referred to in subsection (1), an illegal foreign child is brought before a court, the court may order that the child be assisted in applying for asylum in terms of the Refugees (Control) Act.

Cap. 120

(3) A finding that an illegal foreign child who is a victim is a child in need of care and protection shall serve as authorisation for allowing the child to remain in Zambia for the duration of the children's court order.

32. The summary deportation of a victim is prohibited.

Deportation
of victim
prohibited

33. (1) Notwithstanding the provisions of the Immigration and Deportation Act, the Chief Immigration Officer may, in the prescribed manner and subject to the prescribed conditions, allow a foreign victim, irrespective of the victim's status, to remain in Zambia for a non-renewable period not exceeding sixty days:

Suspension
of
deportation
Cap. 123

Provided that—

(a) if the victim is an adult, the victim is placed in the care of a centre for adult victims or any other person, organisation or institution so authorised; or

(b) if the victim is a child, the victim is referred to a designated social worker for investigation or placed in the care of any other person, organisation or institution so authorised.

(2) The non-renewable period referred to in subsection (1) shall not depend upon the willingness of a victim to co operate with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons.

(3) An immigration officer, police officer, labour inspector, social worker, medical practitioner or nurse who has identified a person as a victim shall inform the person of the person's right to apply for a non-renewable period referred to in subsection (1).

Temporary
residency
Cap. 123

34. (1) Notwithstanding the provisions of the Immigration and Deportation Act, a visitor's permit may, subject to the prescribed conditions, be issued to a victim who—

- (a) is present in Zambia;
- (b) has agreed to co-operate with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons;
- (c) is an adult and is placed in the care of a centre for adult victims, or any other person, organisation or institution so authorised;
- (d) is a child and has been referred to a designated social worker for investigation or placed in the care of any other person, organisation or institution so authorised.

(2) A visitor's permit referred to in subsection (1) may be issued to a victim irrespective of—

- (a) the victim's status; or
- (b) whether a non-renewable period referred to in subsection (1) of section *thirty-three* was granted or has expired.

Permanent
residency
Cap. 123

35. A victim may apply for a permanent residence under the Immigration and Deportation Act after five years continuous residence in Zambia from the date on which the victim was granted a visitor's permit referred to in section *thirty-four*:

Provided that the victim proves to the satisfaction of the Chief Immigration Officer that the victim may be harmed, killed or trafficked again if returned to the victim's country of origin or the country from where the victim has been trafficked.

Repatriation
of victim
from Zambia

36. The Ministry responsible for social welfare shall not return a foreign child who is a victim to the child's country of origin or the country from where the child has been trafficked without giving due consideration to—

- (a) the safety of the child during the repatriation process;
- (b) the availability and suitability of care arrangements in the country to which the child is to be returned;
- (c) the safety of the child in the country to which the child is to be returned; and

(d) the possibility that the child might be harmed, killed or trafficked again.

(2) The Minister—

(a) shall not return a person who is an adult victim to the person's country of origin or the country from where the person has been trafficked without giving due consideration to—

(i) the safety of the person during the repatriation process;

(ii) the safety of the person in the country to which the person is to be returned; and

(iii) the possibility that the person might be harmed, killed or trafficked again; and

(b) shall—

(i) before returning a person referred to in paragraph (a) of subsection (2) to that person's country of origin or the country from where the person has been trafficked, request the Ministry responsible for social welfare to take the reasonable steps referred to in paragraph (a) of section *thirty-seven*; and

(ii) inform a person referred to in paragraph (a) of subsection 2, in the prescribed manner, of any arrangements that have been made for the person's reception in the country to which the person is to be returned.

(3) This section does not prohibit the return of a person who is an adult victim to the person's country of origin or the country from where the person has been trafficked and who freely elects to do so.

37. The Ministry responsible for social welfare shall—

(a) take reasonable steps to find an institution or organisation that renders assistance to victims of trafficking in the country to which a person referred to in subsection (1) or (2) of section *thirty-six* is to be returned and that is willing to provide assistance to such a person; and

(b) without undue delay, provide the Ministry with information in respect of a request made in terms of subparagraph (i) of paragraph (b) of subsection (2) of section *thirty-six*.

Assistance
to foreign
victim

38. (1) With due regard to the safety of a person and without delay—

(a) the Ministry responsible for foreign affairs shall—

(i) in co-operation with the Ministry responsible for social welfare assess the risks to the safety and

Repatriation
of
victim to
Zambia

- life of a person who is a citizen or permanent resident of Zambia and who is a victim, if returned to Zambia;
 - (ii) facilitate the return to Zambia of a person referred to in subparagraph (i); and
 - (iii) advise the Minister on measures to be taken for the secure reception of a person referred to in subparagraph (i) at a Zambian port of entry;
- (b) the Minister shall —
- (i) facilitate and accept the return of a person referred to in paragraph (a);
 - (ii) where necessary, take measures to secure the reception of a person referred to in paragraph (a) at a Zambian port of entry;
 - (iii) issue such travel documents or other authorisations as may be necessary to enable such a person to travel to and enter Zambia;
 - (iv) at the request of another State that is a party to the Protocol or to an agreement relating to trafficking in persons, verify that a person who is a victim is a citizen or permanent resident of Zambia;
 - (v) upon entry into Zambia of a child who is a victim refer the child to a designated social worker for investigation; or
 - (vi) upon entry into Zambia of a person who is an adult victim refer the person to a centre for adult victims for an assessment.

Escorting of
child victim

39. (1) If it is considered to be in the best interests of a child who has been trafficked, the Minister responsible for social welfare shall authorise an adult at State expense to escort the child from the place where the child was found to the place from which the child was trafficked.

(2) The Minister responsible for social welfare shall not act in terms of subsection (1) unless the Minister is satisfied that the parent, guardian or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back.

PART IV CENTRES FOR VICTIMS

- | | |
|---|--|
| <p>40. The Minister responsible for social welfare shall—</p> <p>(a) from money appropriated by Parliament for that purpose, establish and operate centres for victims; and</p> <p>(b) ensure an appropriate spread of such centres throughout Zambia.</p> | <p>Establishment of centres for victims</p> |
| <p>41. A centre for victims shall comply with the norms and standards as the Minister may, by statutory instrument, prescribe.</p> | <p>Minimum norms and standards</p> |
| <p>42. A centre for child victims—</p> <p>(a) shall secure the physical safety of a child victim;</p> <p>(b) shall provide temporary basic material support for the care of a child victim;</p> <p>(c) shall offer a programme for—</p> <p style="padding-left: 40px;">(i) the provision of counselling to child victims; and</p> <p style="padding-left: 40px;">(ii) the provision of rehabilitation services to child victims; and</p> <p>(d) shall, in co-operation with the Ministry responsible for education, offer a programme aimed at the provision of education to child victims.</p> | <p>Programme offered by centre for child victims</p> |
| <p>43. A centre for adult victims—</p> <p>(a) shall secure the safety of adult victims at risk of retaliation;</p> <p>(b) shall offer a programme aimed at—</p> <p style="padding-left: 40px;">(i) the provision of counselling to adult victims;</p> <p style="padding-left: 40px;">(ii) the provision of rehabilitation services to adult victims; and</p> <p style="padding-left: 40px;">(iii) the re-integration of adult victims into their families and communities;</p> <p>(c) may, in co-operation with the Ministry responsible for education, offer a programme aimed at the provision of education to adult victims; and</p> <p>(d) may, in co-operation with the Ministry responsible for labour, offer a programme aimed at the provision of skills development training to adult victims.</p> | <p>Programme offered by centre for adult victims</p> |
- (2) A centre for adult victims that provides accommodation to an adult victim who has a child in her care shall offer a programme aimed at the reception, care and development of such a child.
- (3) Subject to subsection (4), a child referred to in subsection (2) may be cared for at any other premises only with the explicit consent of the adult victim.

- (4) A child referred to in subsection (2) shall be referred to a designated social worker for investigation to determine whether the child is in need of care and protection.
- Assessment of victim 44. Upon admission of a victim to a centre for victims, an assessment shall be made by a social worker to determine—
- (a) the risks to the safety and life of the victim;
 - (b) the immediate needs of the victim; and
 - (c) the long term needs of the victim.
- Tracing of family of trafficked person 45. (1) A welfare officer shall be assisted by the police or any other person to trace the family of a trafficked person.
- (2) Any person who has information which may assist with the tracing of the family of a trafficked person shall provide the information to a welfare officer, the police or a non-governmental organisation.
- Rehabilitation of victim 46. (1) The Ministry responsible for social welfare shall provide mechanisms and programs for the rehabilitation of trafficked persons.
- (2) Trafficked persons may receive financial assistance from the Fund under this Act.
- (3) The best interest of the child shall be paramount in any assistance given to rescue,
- Provision of health care service 47. A victim is entitled to the same public health care services as those to which the citizens of Zambia have access.

PART V

FORFEITURE OF PROCEEDS OF HUMAN TRAFFICKING

- Interpretation 48. In this Part—
- “forfeited property” means the money or other property to which a forfeiture order applies; and
- “receiver” includes the Official Receiver acting as receiver or manager of property and a person who acts as a trustee, liquidator, receiver or manager under the applicable bankruptcy or insolvency law.
- Attachment of property 49. (1) The Attorney-General may make an *ex parte* application to the High Court for a provisional order temporarily suspending dealings relating to any money or other property due, owing, belonging or held on behalf of—
- (a) a person in this section referred to as a suspect charged or about to be charged with an offence under this Act or with an offence which constitutes an act of human trafficking; or

(b) any other specified person.

(2) The Attorney-General may make an *ex parte* application to the High Court for a provisional order temporarily suspending dealings relating to any money or other property due, owing, belonging or held on behalf of—

(a) an organisation involved in human trafficking;

(b) a specified person in this section referred to as a “suspect” reasonably suspected of being a member of an organisation involved in human trafficking; or

(c) any other specified person.

(3) An order made under this section may—

(a) prohibit any person from making money or other property available to or for the benefit of the organisation referred to in subsection (2) or to a suspect;

(b) provide for granting or authority to make money or other property available to any person and on such conditions as may be specified in the order;

(c) require a person to provide such information or produce such documents or records as may be reasonably required for the investigation of an offence under this Act; or

(d) include such other condition as the court may impose.

(4) The court may appoint a suitable person to manage the assets of an organisation or suspect during the period of operation of an order made under this section.

(5) The Attorney-General shall—

(a) cause notice of an order made under this section to be published in the next issue of the *Gazette* and in two daily newspapers of general circulation in the area;

(b) give notice of the order to—

(i) any bank, financial institution or other business person; and

(ii) any other person who the Attorney-General knows or suspects may hold or be vested with property belonging to or held on behalf of the organisation or suspect.

(6) An order under this section shall lapse upon the expiry of thirty days from the date of the order unless the High Court, after hearing the parties, otherwise directs.

(7) A person who is aggrieved by the exercise by the Attorney-General of any powers under this section may bring an action in the High Court against the Attorney-General for damages or any other legal remedy.

Property
tracking

50. (1) Where the Attorney-General has reasonable grounds to suspect that a person has committed, is committing or is about to commit an offence under this Act, or is in possession of property obtained through the commission of an offence under this Act, the Attorney-General may, for purposes of investigating the offence, apply to the High Court for an order—

- (a) compelling the person to deliver up any document or record relevant to identifying, locating or quantifying any property belonging to that person or in that person's possession or control; or
- (b) requiring a bank or any other financial institution, trustee or custodian to produce all information and deliver up all documents and records regarding any business transaction conducted by or on behalf of the person.

(2) Any order made under this section may authorise an authorised officer to enter any premises, including a bank or other financial institution, and search the premises and remove any documents or records for the purposes of executing the order.

(3) Any person who delays, interferes with or willfully obstructs an authorised officer in the exercise of powers under this section commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding twenty years.

Seizure and
detention of
funds used in
furtherance
of offence
under Act

51. (1) An authorised officer who has reasonable grounds to suspect that any money which is being imported into or exported from Zambia, or is being brought to any place in Zambia for the purpose of being exported from Zambia, is for the furtherance of an offence under this Act, may seize the money.

(2) An authorised officer may seize money under this section if the officer reasonably suspects that only part of the money is for the furtherance of an offence under this Act, where it is not reasonably practicable to seize that part only of the money.

(3) An authorised officer may exercise powers under subsection (1), whether or not any proceedings have been brought for an offence under this Act.

(4) An authorised officer shall, as soon as is reasonably practicable and in any event not later than seven days after the seizure of any money under this section, make an application to the High Court for a detention order with respect to that money.

(5) The court shall not make an order for detention of any money unless it is satisfied that there are reasonable grounds for suspecting that the money is for the furtherance of an offence under this Act.

(6) Subject to subsection (7), any order made under this section shall remain valid for a period of sixty days, and, unless the money is to be produced before the court in proceedings against any person for an offence with which the money is connected, may be renewed for further periods of not more than thirty days at a time, by the High Court, on further application.

(7) Any money detained under this section shall be deposited by an authorised officer in an interest bearing account with a bank and shall be released by order of the High Court to a person appearing to the court to be lawfully entitled to it—

- (a) where the conditions under subsection (5) are no longer met; or
 - (b) if no proceedings have been brought in connection with the money within six months of the seizure of the money.
- (8) In this section, “authorised officer” means—
- (a) the Commissioner of Customs and Excise holding office as such under the Customs and Excise Act;
 - (b) the Director-General of the Anti-Corruption Commission;
 - (c) the Commissioner of the Drug Enforcement Commission;
 - (d) the Inspector-General of Police holding office as such under the Zambia Police Act;
 - (e) the Attorney-General; or
 - (f) a person to whom an authorised officer has delegated the functions of office for the purposes of this section.

Cap. 322

Cap. 107

- (9) For the purpose of this section, “money” means—
- (a) coins and notes in any currency;
 - (b) postal orders;
 - (c) travellers’ cheques;
 - (d) bankers’ drafts;
 - (e) such other kinds of negotiable or monetary instrument as may be prescribed by rules made under this Act; and
 - (f) a deposit in a bank or other financial institution traceable to money in any of the forms mentioned in paragraphs (a) to (e).

52. (1) The court before which a person is convicted of an offence under this Act may make a forfeiture order in accordance with the provisions of this section.

Forfeiture

(2) Where a person is convicted of an offence under section *three* or *seven* of this Act the court may order the forfeiture of anything which the court considers was in the person’s possession for purposes connected with the offence.

(3) Where a person is convicted of an offence under subsection (1) or (2) of section *fifteen* or under section *sixteen* the court may order the forfeiture of any money or other property—

- (a) which, at the time of the offence, the person had in possession or under that person's control; and
 - (b) which, at that time, the person intended should be used for the commission of an offence under this Act.
- (4) Where a person is convicted of an offence under subsection (2) of section *fifteen*, the court may order the forfeiture of any money or other property—
- (a) which, at the time of the offence, the person had in that person's possession or under that person's control; and
 - (b) which, at that time, the person knew would or might be used for the commission of an offence under this Act.
- (5) Where a person is convicted of an offence under section *seventeen*, the court may order the forfeiture of the money or other property—
- (a) to which the arrangement in question related; and
 - (b) which, at the time of the offence, the person knew was for the commission of an offence under this Act or would or might be used for the commission of an offence.
- (6) Where a person is convicted of an offence under sections *fifteen* to *eighteen*, the court may order the forfeiture of any money or other property which wholly or partly, and whether directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.
- (7) Before making an order under this section, a court shall afford any person —
- (a) who is not a party to the proceedings; and
 - (b) who claims to be the owner of or otherwise interested in any of the property which may be forfeited under this section;

an opportunity to be heard.

(8) The First Schedule shall have effect in respect of forfeiture orders under this section.

Implementation
of forfeiture
orders

53. (1) Where a court makes a forfeiture order, it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular may—

- (a) require any of the forfeited property to be paid or handed over to the Registrar of the court;
- (b) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the Registrar of the court; or

(c) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the Registrar of the court to the Fund.

(2) A reference to the proceeds of a sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation.

54. (1) A receiver appointed under paragraph (b) of subsection (1) of section *fifty-three* shall be paid the receiver's remuneration and expenses out of the proceeds of the realised property paid to the Registrar of a court under paragraph (b) of subsection (2) of that section.

Remuneration
of receiver

(2) Where proceeds are insufficient, the receiver shall be paid the receiver's remuneration and expenses by the Fund.

(3) A receiver shall not be liable to any person in respect of any loss or damage resulting from action —

(a) which the receiver takes in relation to property which is not forfeited property, but which the receiver reasonably believes to be forfeited property;

(b) which the receiver would be entitled to take if the property were forfeited property; and

(c) which the receiver reasonably believes that the receiver may take because of the belief that the property is forfeited property.

(4) Subsection (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.

55. The Registrar of a court that makes a forfeiture order shall issue a certificate in respect of a forfeiture order if an application is made by—

Certificate
to
forfeiture

(a) the prosecutor in the proceedings in which the forfeiture order was made; or

(b) the defendant in those proceedings.

56. (1) During the period of six months following the making of a forfeiture order, no money which is subject to the order, or which represents any property subject to it, shall be finally disposed of under this Part.

Protection of
creditors

(2) Where any money or property is subject to a forfeiture order—

(a) the commencement of an insolvency occurs, or has occurred, in the course of any proceedings;

(b) any function in relation to that property would, apart from the forfeiture order, be exercised by a receiver acting in those proceedings; and

(c) during the period of six months following the making of the forfeiture order, a receiver gives written notice to the Registrar of the court executing the forfeiture order of the matter referred to in paragraphs (a) and (b);

subsection (3) shall apply in relation to the property in question.

(3) If property subject to a forfeiture order is sold, the proceeds of the sale —

(a) shall cease to be subject to the forfeiture order and any ancillary order; and

(b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.

(4) Where—

(a) subsection (3) would, but for this subsection, apply in relation to any property; and

(b) any person acting in pursuance of the forfeiture order or any ancillary order has entered into a contract for the sale of the property, or has incurred any other obligations in relation to it;

that subsection shall not take effect in relation to the property, or the proceeds of its sale, unless the obligations have been discharged.

(5) Where, by virtue of subsection (3), any money or other property falls to be dealt with in insolvency proceedings, the Minister shall be taken to be a creditor in those proceedings to the amount or value of that property but, notwithstanding any provision contained in or made under any other enactment, the debt shall rank after the debts of all other creditors and shall not be paid until the other creditors have been paid in full.

(6) Where by virtue of subsection (3), any property ceases to be subject to a forfeiture order in consequence of the making of a bankruptcy order or an award of sequestration and subsequently the bankruptcy order is annulled or the award of sequestration is recalled or reduced, the property shall become subject to the forfeiture order and any ancillary order.

(7) Where any property referred to in subsection (6) is money, or has been converted into money—

(a) the court which ordered the annulment, or which recalled or reduced the award of sequestration, shall make an order specifying, for the purposes of paragraph (b) property comprised in the estate of the bankrupt or debtor to the amount or value of the property in question; and

(b) the property specified under paragraph (a) shall become subject to a forfeiture order and any applicable ancillary orders, in place of the property in question.

(8) In this section—

“the commencement of an insolvency” means—

(a) the making of a bankruptcy order under the Bankruptcy Act; or

(b) in the case of a company—

(i) the passing of a resolution for its winding up; or

(ii) the making of an order by the court for the winding up of the company, where no such resolution has been passed, in accordance with the Companies Act; and

Cap 82
Cap 388

“final disposal” in relation to any money, means its payment to the Fund in accordance with this Schedule; and “finally dispose” shall be construed accordingly.

57. (1) Where—

Protection of
insolvency

(a) a receiver seizes or disposes of any property in relation to which the receiver’s functions are not exercisable because it is for the time being subject to a forfeiture order; and

(b) at the time of seizure or disposal, the receiver believes and has reasonable grounds for believing that the receiver is entitled, whether in pursuance of a court order or otherwise, to seize or dispose of any property;

the receiver shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except insofar as the loss or damage is caused by the receiver’s negligence in so acting.

(2) A receiver shall have a lien on the property or the proceeds of its sale—

(a) for the expenses that the receiver incurred in connection with insolvency proceedings in relation to which the seizure or disposal purported to take place; and

(b) for so much of the receiver’s remuneration as may reasonably be assigned for the receiver acting in connection with those proceedings.

PART VI

COMPENSATION

58. (1) The court may, in addition to any punishment which it may impose in respect of any offence under this Act, order a person convicted of such offence to pay appropriate compensation to any victim of the offence for—

Compensation
to victim

(a) damage to or the loss or destruction of property, including money;

- (b) physical, psychological or other injury; or
 - (c) loss of income or support;
- resulting from the commission of such offence.

(2) In assessing the compensation that a person convicted of any offence under this Act may be ordered to pay, the court shall consider the means of the offender.

Compensation
to State

59. A court may—

- (a) in addition to any punishment which it may impose in respect of an offence under this Act;
- (b) in addition to any order for compensation to a victim in terms of section *fifty-eight*; and
- (c) upon application of the prosecutor;

make an order for payment to the State of an amount in compensation for expenses incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation and repatriation of the victim of the offence.

Payment of
compensation

60. (1) Where a person is required to pay compensation, the court may enforce the payment of compensation whether in whole or in part—

- (a) by allowing the accused person to pay compensation on the conditions and in instalments at the intervals it considers appropriate; or
- (b) if money is due or is to become due as salary or wages from any employer of the person concerned, by ordering such employer to deduct a specified amount from the salary or wages so due and to pay over such amount to the clerk or registrar of the court.

(2) The court may, vary the conditions and instalments according to which compensation is to be made.

(3) The court may on good cause shown, review any decision that it has made on the making of compensation and replace it with a new order.

Recovery of
compensation

61. (1) Where a person is required to pay compensation, the court making the order may issue a warrant addressed to the sheriff of the court authorising the sheriff to recover the amount of the compensation by attachment and sale of any property belonging to such person.

(2) The amount which may be recovered in terms of subsection (1) shall be sufficient to cover, in addition to the amount of the compensation, the costs and expenses of the warrant and of any attachment and sale of property.

62. (1) Where a court has ordered a person to pay compensation and such compensation is not made in full or is not recovered in full, the court that passed the sentence may—

Failure to
make
compensation

- (a) warn such person to appear before it; or
- (b) issue a warrant directing that such person be arrested and brought before the court.

(2) Where a person referred to in subsection (1) is brought before a court, the court may impose such other sentence as would have been imposed if the court were considering sentence after conviction:

Provided that the court shall take into consideration any part of the compensation that may have been made or recovered.

PART VII

INVESTIGATIONS

63. (1) Where an order has been made under this Part in relation to an investigation relating to an offence under this Act, a police officer of or above the rank of inspector named in the order may require a bank, financial service provider or a financial institution to provide customer information for the purposes of the investigation.

Power to
obtain
financial
information

(2) The information shall be provided in such manner and within such time as may be specified in the order.

(3) No customer information affecting money belonging to a client, held by a legal practitioner, shall be the subject of an *ex parte* order under this Part.

(4) A bank, financial service provider or a financial institution which fails to comply with a requirement under an order commits an offence and is liable to a penalty not exceeding five hundred thousand penalty units.

(5) It is a defence for an institution charged with an offence under subsection (4) to satisfy the court, on a balance of probabilities—

- (a) that the information required was not in the institution's possession; or
- (b) that it was not reasonably practicable for the institution to comply with the requirement.

64. (1) An order under this Part shall be made by the High Court on the application of a police officer above the rank of inspector or the Attorney-General.

Procedure

(2) Rules of court may make provision with respect to the procedure for an application for an order under this Part.

Criteria for
making
order

65. An order under this Part shall be made if the court is satisfied that—

- (a) the order is sought for the purposes of an investigation relating to an offence under this Act;
- (b) the tracing of property that has been used for the furtherance of an offence under this Act is desirable for the purposes of the investigation; and
- (c) the order will enhance the effectiveness of the investigation.

Meaning of
financial
institution
Cap. 385

66. (1) In this Part, “bank”, “financial institution”, and “financial service provider” have the meanings assigned to them under the Banking and Financial Services Act.

(2) An institution which ceases to be a bank, financial service provider or a financial institution for the purposes of this Part, whether by virtue of rules made under this Act or otherwise, shall continue to be treated as a bank, financial institution or financial service provider for the purposes of any requirement under this Part to provide customer information which relates to a time when the institution was a bank, financial institution or financial service provider, as the case may be.

Customer
information

67. (1) In this Part, “customer information” means—

- (a) information as to whether a business relationship exists or existed between a bank, financial institution or financial service provider and a particular customer;—
- (b) a customer’s account number;
- (c) a customer’s full name;
- (d) a customer’s date of birth;
- (e) a customer’s address or former address;
- (f) the date on which a business relationship between a bank, financial institution or financial service provider and a customer begins or ends;
- (g) any evidence of a customer’s identity obtained by a bank, financial institution or financial service provider in pursuance of or for the purposes of the Prohibition and Prevention of the Money Laundering Act, 2001; and
- (h) the identity of a person sharing an account with a customer.

Act No. 14
of 2001

(2) For the purposes of this Part, there is a business or customer relationship between a bank, financial institution or financial service provider and a person if—

- (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them; and

(b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.

(3) Rules made under this Act may provide for a class information—

(a) to be customer information for the purpose of this Part; or

(b) to cease to be customer information for the purposes of this Part.

68. (1) A person who, knowing or having reasonable cause to suspect that an authorised officer is conducting an investigation of an offence under this Act—

(a) discloses to another person anything which is likely to prejudice the investigation; or

(b) interferes with material which is likely to be relevant to the investigation;

commits an offence and is liable, upon conviction, to imprisonment for a period of not less than ten years and not exceeding fifteen years.

(2) A person who, knowing or having reasonable cause to suspect that a disclosure has been or will be made under section twenty—

(a) discloses to another person anything which is likely to prejudice an investigation resulting from the disclosure under that section; or

(b) interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section;

commits an offence and is liable, upon conviction, to imprisonment for a period of not less than ten years and not exceeding fifteen years.

(3) It is a defence for a person charged with an offence under this section to satisfy the court—

(a) that the person did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect an investigation of an offence under this Act; or

(b) that the person had a reasonable excuse for the disclosure or interference.

(4) Nothing in this section applies to a disclosure which is made by a legal practitioner—

(a) to the legal practitioner's client or to the clients representative in connection with the provision of legal advice by the legal practitioner to the client and not with a view to furthering a criminal purpose; or

Disclosure
of
information,
etc.

- (b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.

PART VIII

PORT AND BORDER CONTROLS

- Port and border controls
Cap. 123
Interpretation
69. (1) This Part has effect to confer powers to examine persons arriving in or leaving Zambia and for related purposes.
(2) The powers conferred by this Part shall be exercised notwithstanding any right conferred by the Immigration and Deportation Act.
70. (1) In this Part—
“examining officer” means—
 (a) a police officer;
 (b) an officer from the Anti-Corruption Commission;
 (c) an officer from the Drug Enforcement Commission;
 (d) an immigration officer; and
 (e) a customs officer who is designated for the purpose of this Part by the Commissioner of Customs and Excise;
“port” means—
 (a) a port within the meaning of the Customs and Excise Act; or
 (b) such other point of entry into or exit from Zambia as the Minister may designate by notice published in the *Gazette*;
“port manager” means any person having custody, control or management of a port;
“ship” includes a vessel or hovercraft; and
“vehicle” includes a train.
- Information
71. An examining officer may question a person who has arrived in or who is seeking to leave Zambia by ship, vehicle or aircraft or any other means for the purpose of determining —
 (a) whether there is any reasonable cause to suspect that the person is a trafficker or is involved in trafficking of persons; or
 (b) whether the person is subject to a deportation order.
- Questioning
72. A person who is questioned under section *seventy-one* shall—
 (a) give the examining officer any information in the person’s possession which the officer requests;
 (b) produce to the examining officer on request either a valid passport which includes a photograph or another document which establishes the person’s identity and citizenship;

- (c) declare whether the person has any documents of a kind specified by the examining officer; and
- (d) produce to the examining officer on request any document which the person has and which is of a kind specified by the examining officer.

73. (1) For the purposes of exercising a power under section *seventy-one*, an examining officer may—

Stopping of
persons and
vehicle

- (a) stop a person or vehicle; or
- (b) detain a person.

(2) For the purpose of detaining a person under this section, an examining officer may authorise the person's removal from a ship, aircraft or vehicle.

(3) A person detained under this section shall, unless detained under any other power, be released not later than the end of the period of six hours beginning with the time when the examination begins.

74. An examining officer may search a ship, aircraft or conveyance which the officer has reasonable grounds to believe is carrying or harbouring a trafficker or trafficked person or thing likely to be used for such purposes.

Searching of
vessels
and aircraft

75. An examining officer who questions a person under section *seventy-one* may, for the purpose of determining whether the person is a trafficker—

Search of
persons

- (a) search the person;
- (b) search anything which the person has or which belongs to the person and which is on a ship or aircraft;
- (c) search anything which the person has, or which belongs to the person and which the examining officer reasonably believes has been, or is about to be, on a ship or aircraft; and
- (d) search a ship or aircraft for anything falling within paragraph (b).

76. (1) An examining officer may examine goods to which this section applies for the purpose of determining whether the goods have been used in the commission, preparation or instigation of acts of human trafficking.

Examining of
goods

(2) This section applies to goods which have arrived in or are about to leave Zambia on a ship, aircraft or vehicle.

(3) In this section, "goods" includes —

- (a) property of any description; and
- (b) containers.

(4) An examining officer may board a ship or aircraft or enter a vehicle for the purpose of exercising any of the officer's powers under this section.

Detention of
property

77. (1) This section applies to anything which—
- (a) is given to an examining officer in accordance with section *seventy-two*;
 - (b) is searched or found in a search under sections *seventy-four* or *seventy-five*; or
 - (c) is examined under section *seventy-six*.
- (2) An examining officer may detain any thing—
- (a) for the purpose of examination, for a period not exceeding three days beginning with the day on which the detention commences;
 - (b) which may be required for use in any criminal proceedings; or
 - (c) which may be required in connection with a decision by the Minister whether to make a deportation order or not.

Designation
of
control area

78. (1) The Minister may, by notice in writing, to an owner or agent of any ship or aircraft—
- (a) designate control areas in any port in Zambia; and
 - (b) specify conditions for or restrictions on the embarkation or disembarkation of passengers in a control area.
- (2) Where an owner or agent of a ship or aircraft receives a notice under subsection (1) in relation to a port, the owner or agent shall take all reasonable steps to ensure, in respect of the ship or aircraft—
- (a) that passengers do not embark or disembark at the port outside a control area; and
 - (b) that any specified conditions are met and any specified restrictions are complied with.

Control area
facilities

79. (1) The Minister may, by notice in writing, to a port manager—
- (a) designate control areas in the port;
 - (b) require the port manager to provide at the port manager's expense specified facilities in a control area for the purposes of the embarkation or disembarkation of passengers or their examination under this Part;
 - (c) require conditions to be met and restrictions to be complied with in relation to the embarkation or disembarkation of passengers in a control area;
 - (d) require the port manager to display, in specified locations in control areas, a notice containing specified information about the provisions of this Part in such form as may be prescribed.

(2) Where a port manager receives notice under subsection (1), the port manager shall take all reasonable steps to comply with any requirement set out in the notice.

80. (1) The Minister may, by order, make provision requiring a person who disembarks in Zambia from a ship or aircraft, if required to do so by an examining officer, to complete and produce to the officer a card containing such information in such form as the order may specify.

Information
cards

(2) An order under this section may require an owner or agent of a ship or aircraft employed to carry passengers for reward to supply the passengers with cards in the form required by virtue of subsection (1).

81. (1) This section applies to a ship, vehicle or aircraft which arrives or is expected to arrive in Zambia.

Information
from owner
of vessel or
aircraft

(2) An examining officer may request an owner or agent of a ship, vehicle or aircraft to provide such information as the officer may require for the purposes of this Act.

(3) An owner or agent shall comply with a request made under subsection (2) within such period as the order may specify.

(4) A request to an owner or agent may relate—

- (a) to a particular ship, vehicle or aircraft;
- (b) to any passenger or member of the crew;
- (c) to all ships, vehicles or aircraft of the owner or agent; or
- (d) to a specified ship, vehicle or aircraft.

(5) A passenger or member of the crew on a ship, vehicle or aircraft shall give the captain of the spaceship or aircraft any information required for the purpose of enabling the owner or agent to comply with a request under this section.

(6) Subsections (2) and (5) shall not require the provision of information which is required to be provided under or by virtue of any provision made by or under the Immigration and Deportation Act.

82. The Minister shall, at the request of another State that is a party to the Protocol or to an agreement relating to trafficking in persons, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued by the department of immigration and suspected of being used for the commission of the offence of trafficking in persons.

Cap. 123
Legitimacy
and validity
of
documents

83. (1) A person who—

- (a) fails to comply with a duty imposed under or by virtue of this Part; or
- (b) contravenes a prohibition imposed under or by virtue of this Part;

Offences

commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand penalty units, or to both.

PART IX DEPORTATION ORDERS

Making and
effect of
deportation
orders

84. (1) Where the Minister is satisfied that any person—
(a) is or has been involved in the commission, preparation or instigation of an offence under this Act in Zambia; or
(b) is attempting or may attempt to enter Zambia with a view to being involved in the commission, preparation or instigation of an offence under this Act;

the Minister may make a deportation order against the person prohibiting the person from being in, or entering, Zambia.

(2) In deciding whether to make a deportation order under this section against a person who is ordinarily resident in Zambia, the Minister shall have regard to the question whether that person's connection with any country or territory outside Zambia is such as to make it appropriate that such an order should be made.

(3) A deportation order shall not be made under this section against any person who is a citizen of Zambia.

Cap. 123

(4) This section has effect notwithstanding any provision of the Immigration and Deportation Act.

(5) A person who is the subject of a deportation order may apply to the High Court for review of the order.

Duration

85. (1) A deportation order may be revoked at any time by a further order made by the Minister.

(2) The revocation of a deportation order against a person shall not prevent the making of a further deportation order against the person.

Notice of
order

86. (1) A notice of the making of a deportation order shall be served on the person against whom it has been made within fourteen days of the making of the order.

(2) Nothing in this section imposes an obligation to take any steps to serve a notice on a person at a time when the person is outside Zambia.

(3) Where the person against whom a deportation order is made is not for the time being detained by virtue of this Act, notice of the making of the order may be served on the person by posting it to the person's last known address or by the publication of a notice in the *Gazette* or newspaper of general circulation in the area.

87. (1) The Minister may give directions for the removal from Zambia of any person who is the subject of a deportation order.

Directions
for
removal

(2) A person who, without reasonable excuse, fails to comply with directions given to that person under this section commits an offence and is liable to imprisonment for a term not exceeding two years or to a fine not exceeding eighty thousand penalty units, or to both.

88. (1) A person in respect of whom directions for removal may be given under section *eighty-seven* may be detained pending the giving of such directions and pending removal in pursuance of the directions.

Detention
pending
removal

(2) An examining officer may arrest, without warrant, a person liable to be detained under this section.

(3) A captain of a ship or aircraft, if so required by an examining officer, shall prevent any person on board the ship or aircraft from disembarking in Zambia.

(4) Where a captain of a ship or aircraft is required to prevent a person from disembarking, the captain may for that purpose detain the person in custody on board the ship or aircraft.

(5) A captain of a ship or aircraft who fails to take reasonable steps to comply with a requirement imposed under this Act commits an offence and is liable to imprisonment for a term not exceeding two years or to a fine not exceeding eighty thousand penalty units, or to both.

(6) An examining officer may remove a person from a vehicle for detention under this Act.

89. (1) If a magistrate is satisfied that there are reasonable grounds for suspecting that a person who is the subject of a deportation order is to be found on any premises, the magistrate may grant a search warrant authorising any police officer to enter the premises for the purpose of searching for and arresting that person.

Provisions
supplementary
to detention

(2) A person detained under this Part shall be deemed to be in legal custody at any time when the person is detained in police custody in Zambia otherwise than on board a ship, vehicle or aircraft.

(3) Where a person is detained under this Part, an examining officer may take all such steps as may be reasonably necessary for identifying the person.

90. (1) A person who is subject to a deportation order and who fails to comply with the order at a time after the person has been, or has become liable to be, excluded under this Act commits an offence and is liable, upon conviction, to imprisonment for a period of not less than ten years but not exceeding twenty years.

Offences in
connection
with
deportation
order

(2) A person who is knowingly involved in arrangements for securing or facilitating the entry into Zambia of a person whom that person knows, or has reasonable grounds for believing, to be the subject of a deportation order or harbours such a person in Zambia, commits an offence and is liable to imprisonment for a period of not less than ten years but not exceeding twenty years.

PART X

MUTUAL LEGAL ASSISTANCE AND EXTRADITION

Exchange of
information

91. The Attorney-General may, at the request of a competent authority of a foreign State, disclose to that authority any information in the Attorney-General's possession relating to any of the following:

- (a) the actions or movements of persons suspected of involvement in an offence under this Act;
- (b) the use of forged or falsified travel papers by persons involved in an offence under this Act;
- (c) the use of communications technologies by persons suspected of involvement in an offence under this Act;
- or
- (d) the commission of offences by any person against this Act;

if the disclosure is not prohibited by any provision of law and will not be prejudicial to national security or to public safety.

Other
requests
from foreign
States

92. (1) Where a foreign State makes a request for assistance in the investigation or prosecution of an offence under this Act, or for the tracking, attachment or forfeiture of property that is located in Zambia and has been used in the furtherance of an act which, if it had been committed in Zambia, would constitute an offence under this Act, the Attorney-General may—

- (a) execute the request; or
- (b) decline to execute the request, or delay its execution, and inform the foreign State making the request of the reasons therefor.

(2) Where the Attorney-General decides to execute a request for assistance under subsection (1), the Attorney-General—

- (a) shall authorise a police officer in writing, to apply *ex parte* for a search warrant to a magistrate—
 - (i) to search the premises, search any person and inspect any document, record or thing, found therein; and

(ii) to seize and retain any relevant material, including any relevant document, record or thing, found therein; and

(b) may in the manner prescribed, apply to the High Court for—

(i) a property tracking order under section *fifty*;

(ii) an attachment order under section *forty-nine*; or

(iii) an order for forfeiture of property under section *fifty-two*.

(3) The High Court may make an order under this section on such conditions as it may consider appropriate to impose, including any conditions as to payment of debts, sale, transfer or disposal of any property.

(4) For the purposes of subsection (3), the provisions of this Act relating to the tracking, attachment and forfeiture of property shall apply, with the necessary modification, in respect of any act done or alleged to have been done outside Zambia—

(a) which constitutes an offence under this Act; or

(b) which would, if it had been committed in Zambia, constitute such an offence.

(5) A power conferred by an order under this section to inspect any record shall, in relation to an electronic or magnetic record, be construed as a power to require full and free access to the record using the facilities of the occupier of the premises.

(6) A power conferred by an order under this section to seize and retain a record includes, in relation to an electronic or magnetic record, a power to seize any disk, computer or other thing on which the record is stored:

Provided that, where a person having custody or control of a computer, magnetic tape or other thing on which a record is stored captures the record on a disk or other more portable object from which the officer executing the order is capable of obtaining ready access to the record, the power shall be exercised in relation to the more portable object.

93. (1) The Attorney-General may make a request to any foreign State—

Requests to
foreign
States

(a) to provide evidence or information relevant to an offence under this Act; or

(b) for the tracking, attachment or forfeiture of property which has been used for the furtherance of an offence under this Act and is located in that State.

(2) Where the foreign State to which a request for assistance is made under subsection (1) requires the request to be signed by an appropriate competent authority, the Attorney-General shall, for the purposes only of making such a request, be considered as the appropriate competent authority.

(3) The Attorney-General may, in respect of any proceedings for an offence under this Act, apply to the High Court for an order directed to any person resident in a foreign State to deliver oneself or any document, record, material or thing in that person's possession or under that person's control to the jurisdiction of the court or, subject to the approval of the foreign State, to the jurisdiction of a court of the foreign State for the purpose of giving evidence in relation to those proceedings.

(4) Evidence taken, pursuant to a request under this section, in any proceedings in a court of a foreign State may, if it is authenticated, be admitted in evidence in any proceedings to which it relates.

(5) For the purposes of subsection (4), a document is authenticated if—

- (a) it purports to be signed or certified by a judge, magistrate or officer in or of a foreign State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal of a Minister, Department of State or Department, or officer in or of the Government of the foreign State.

Form of
request

94. (1) A request under sections *ninety-two* and *ninety-three* shall be in writing and shall be dated and signed by or on behalf of the person making the request.

(2) A request may be transmitted in writing or by facsimile or by any other electronic device or means.

(3) A request shall—

- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected offence related to an offence under this Act or that a person has been convicted of an offence under this Act;
- (b) state the grounds on which any person is being investigated or prosecuted for an offence under this Act or details of the conviction of the person;
- (c) give sufficient particulars of the identity of the person;
- (d) give particulars sufficient to identify any bank, financial institution or financial service provider or other person believed to have information, documents, record or materials which may be of assistance to the investigation or prosecution;
- (e) request assistance to obtain from a bank, financial institution, financial service provider or other person any information, document, record or material which may be of assistance to the investigation or prosecution;

- (f) specify the manner in which and the person to whom any information, document, record or material obtained pursuant to the request is to be produced;
- (g) state whether an attachment order or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as may assist the execution of the request.

(4) A request shall not be invalidated for purposes of this Act or any legal proceedings by virtue of any failure to comply with subsection (3) where the Attorney-General is satisfied that there is sufficient compliance to enable the execution of the request.

(5) Where the Attorney-General considers it appropriate, pursuant to an international agreement and in the public interest, the Attorney-General may order that the whole or any part of any property forfeited under section fifty two, or the value thereof, be returned or remitted to the requesting State.

95. The Extradition Act shall apply in relation to the extradition of a person—

Extradition
Cap. 94

- (a) who has committed an offence under this Act;
- (b) for an act or omission which, if it has been committed in Zambia, would constitute an offence under this Act;
- (c) who has committed an offence against any law in force in a foreign State relating to anti-human trafficking; or
- (d) who has committed an offence against any Convention or Protocol relating to anti-human trafficking;

whether committed or alleged to have been committed before or after the commencement of this Act, or who is wanted by a State for the carrying out of a sentence imposed pursuant to a conviction for any offence referred to in paragraphs (a) to (d).

PART XI

PREVENTION OF TRAFFICKING IN PERSONS

96. (1) The Minister may, in consultation with the Ministers responsible for education and social services, establish public awareness programmes or other measures designed to—

Public
awareness

- (a) inform and educate persons at risk of becoming victims on issues relating to trafficking in persons, including—
 - (i) common recruitment techniques used by traffickers;
 - (ii) tactics used to keep victims in exploitative situations;

- (iii) the forms of abuse to which victims may be subjected; and
- (iv) organisations, institutions or law enforcement agencies that may be approached for assistance or information;
- (b) inform and educate victims on—
 - (i) their rights as victims;
 - (ii) legal or other measures in place to ensure their safety, recovery and repatriation; and
 - (iii) organisations, institutions or law enforcement agencies that may be approached for assistance or information; and
- (c) discourage the demand that fosters the exploitation of victims, especially women and children.
- (2) The programmes or other measures referred to in subsection (1) shall—
 - (a) include appropriate measures aimed at reaching rural communities; and
 - (b) be reviewed twice a year in order to determine their effectiveness.

Trafficking
of
child by
parent,
guardian or
other person
who has
parental
responsibilities
and rights in
respect of
child

97. (1) Where a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may—

- (a) suspend all the parental responsibilities and rights of that parent, guardian, or other person; and
- (b) place that child in temporary safe care, pending an inquiry by a court.

(2) An action taken by a court in terms of subsection (1) does not exclude a person's liability for committing the offence of trafficking in persons.

International
co operation

98. (1) The President may, on such conditions as the President may determine—

- (a) enter into an agreement with a foreign State that is not a State Party to the Protocol in respect of any matter pertaining to trafficking in persons; and
- (b) enter into an agreement with a foreign State that is a State Party to the Protocol in respect of any matter pertaining to trafficking in persons for the purpose of supplementing the provisions of the Protocol or to facilitate the application of the principles contained therein.

(3) An agreement referred to in subsection (1) shall not be in conflict with the Protocol.

(4) The President may agree to any amendment or revocation of an agreement referred to in subsection (1).

(5) An agreement referred to in subsection (1) or any amendment or revocation thereof, shall not be of any force or effect until such agreement, amendment or revocation has been approved by Parliament.

99. (1) A court in Zambia shall have jurisdiction in respect of an act committed outside Zambia which would have constituted an offence in terms of this Act had it been committed within Zambia, irrespective of whether the act constitutes an offence at the place of its commission—

Extra
territorial
jurisdiction

(a) if the person to be charged

(i) is a citizen of Zambia;

(ii) is ordinarily resident in Zambia;

(iii) was arrested in the territory of Zambia, or in its territorial waters or on board a ship or aircraft registered or required to be registered in Zambia at the time the offence was committed; or

(iv) is a person or a partnership registered in terms of any law in Zambia; or

(b) if the victim is a citizen of Zambia.

(2) A person who commits an offence referred to in subsection (1) is liable, upon conviction, to the penalty prescribed for that offence.

PART XII

COMMITTEE ON HUMAN TRAFFICKING

100. (1) There is hereby established a Committee on Human Trafficking.

Establishment
of
Committee
on Human
Trafficking

(2) The provisions of the Schedule apply in respect to the Committee.

101. The Committee shall —

Functions of
Committee

(a) coordinate the activities of all the relevant institutions on matters connected with trafficking;

(b) make recommendations for a national plan of action against human trafficking, monitor and report on the progress of the national plan of action;

- (c) advise the Minister on policy matters connected with trafficking in persons;
- (d) provide advice on the investigation and prosecution of trafficking cases;
- (e) propose and promote strategies to prevent and combat trafficking in persons;
- (f) liaise with government agencies and non-governmental organisations to promote the rehabilitation and re integration of victims;
- (g) prepare guidelines for disbursements from the Fund;
- (h) keep abreast with international and regional developments and standards on trafficking in persons; and
- (i) deal with any matter relating to human trafficking.

PART XIII

HUMAN TRAFFICKING FUND

Establishment
of Fund

102. (1) There is hereby established the Human Trafficking Fund.

(2) The Fund shall consist of—

- (a) voluntary contributions to the Fund from any person;
- (b) such monies as Parliament may approve for purposes of the Fund; and
- (c) any grants from any source within or outside Zambia approved by the Minister responsible for finance.

(3) The monies of the Fund shall be applied for—

- (a) the basic material support of victims;
- (b) skills training of victims;
- (c) tracing the families of victims; and
- (d) any other matter connected with the rehabilitation and re integration of victims in their best interest.

Administration
and
management
of Fund

103. (1) The Fund shall be vested in the Minister responsible for finance and shall be managed and administered by the Minister responsible for social welfare.

(2) The Task Force shall develop guidelines for the disbursements from the Fund.

104. The Minister shall cause to be prepared proper books of account in relation to the Fund. Accounts and Audit

105. The Ministers referred to in section *one hundred and three* shall cause an annual statement of the income and expenditure of the Fund to be prepared and laid before the National Assembly. Statement of income and expenditure

PART XIV GENERAL PROVISIONS

106. (1) A power to search premises conferred by virtue of this Act shall be taken to include power to search a container. Powers to stop and search

(2) A power conferred by virtue of this Act to stop a person includes power to stop a vehicle.

(3) Any search of a person carried out pursuant to this Act shall be carried out by a person of the same sex as the person being searched.

107. (1) A document which purports to be— Evidence

(a) a notice or direction given or order made by the Minister or the Attorney-General for the purposes of a provision of this Act; and

(b) signed by the Attorney-General or on the Attorney-General's behalf, shall be received in evidence and shall, until the contrary is proved, be deemed to have been given or made by the Minister or the Attorney-General, as the case may be.

(2) A document bearing a certificate which—

(a) purports to be signed by or on behalf of the Minister or the Attorney-General; and

(b) states that the document is a true copy of a notice or direction given or order made by the Minister or the Attorney-General for the purposes of a provision of this Act;

shall be evidence of the document in legal proceedings.

(3) Nothing in this section limits the operation of any provisions of the Evidence Act.

Cap. 43
Rules of
court

108. The Chief Justice may, by rules of court, make provision with respect to the procedure on applications to any court under this Act, and in particular as to—

(a) the giving of notice to persons affected by an application under this Part; and

(b) the joinder of those persons as parties to the proceedings.

Proceedings
in camera

109. Proceedings for the purpose of inquiring into or trying an offence under this Act may be held in camera.

Regulations

110. (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may provide for—

- (a) the manner in which the reporting of an alleged trafficking case is to be dealt with;
- (b) the manner in which trafficking cases are to be investigated;
- (c) the manner in which victims should be identified, interviewed and treated, paying particular attention to the vulnerability of child victims;
- (d) the referral of victims to social and health care services;
- (e) measures to be taken to ensure the safety of victims or other potential witnesses if there is a likelihood that harm might result to them as a result of the reporting and consequent investigation of the case; and
- (f) the circumstances in which consultation with the prosecuting authority is required with the view to guiding the investigation of trafficking cases for purposes of obtaining the required evidence and to identify relevant witnesses.

SCHEDULE

(Section 100(2))

COMMITTEE ON HUMAN TRAFFICKING

Composition
of
Committee

1. (1) The Committee shall consist of the following members:

- (a) one representative each from the Ministries responsible for—
 - (i) social welfare;
 - (ii) gender;
 - (iii) children;
 - (iv) local government;
 - (v) health;

- (vi) home affairs;
- (vii) labour; and
- (viii) information

(b) one representative each from—

- (i) the Department of Immigration; and
- (ii) the Zambia Police Force;

(c) a representative of the Attorney-General; and

(d) a representative of a non-governmental organisation dealing with matters concerning children.

(2) The members shall be nominated by their institutions and appointed by the Minister.

2. (1) Subject to the other provisions of this Act, a member shall hold office for a period of three years from the date of appointment and may be re appointed for a further like period.

Tenure of
office
and
vacancies

(2) The members shall elect a chairperson from amongst themselves.

(3) The office of a member shall become vacant if—

(a) the member has been absent without reasonable excuse from three consecutive meetings of the Committee of which the member has had notice;

(b) the member dies;

(c) the member is adjudged bankrupt;

(d) the member becomes mentally or physically incapable of performing the duties of a member of the Committee;
or

(e) the member is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term exceeding six months.

3. (1) Subject to the other provisions of this Act, the Committee may regulate its own procedure.

Proceedings
of
Committee

(2) The Committee shall meet for the transaction of business at least once in every three months at such places and at such times as the Chairperson may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Committee may be called by the Chairperson and shall be called if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) The quorum at any meeting of the Committee shall be two-thirds of the members.

(5) There shall preside at any meeting of the Committee—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson;
or

(c) in the absence of the Chairperson and the Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Committee on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(7) Where a member is for any reason unable to attend any meeting of the Committee, the member may, in writing, nominate another person from the same organisation to attend such meeting in that member's stead and such person shall be considered to be a member for the purpose of such meeting.

(8) The Committee may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Committee but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by any defect in the appointment of any member or by reason that any person not entitled so to do, took part in the proceedings.

(10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee and of any committee established by the Committee.

Subcommittees
of
Committee

4. (1) The Committee may, for the purpose of performing its functions under this Act, constitute any subcommittee and may delegate to any such committee such of its functions as it thinks fit.

(2) The Committee may appoint as members of the subcommittees constituted under subparagraph (1), persons who are or are not members of the Committee and such persons shall hold office for such period as the Committee may determine.

Allowances
of members

5. There shall be paid to the members of the Committee or any subcommittee of the Committee such allowances as the Committee may, with the approval of the Minister, determine.

Disclosure of
interest

6. (1) If a member is present at a meeting of the Committee or any subcommittee of the Committee at which any matter in which the member or member's spouse is directly or indirectly interested in a private capacity, is the subject of consideration, the member shall, as soon as is practicable after the commencement of the meeting, disclose such interest, and shall not, unless the Committee or the subcommittee otherwise directs, take part in any consideration or discussion of or vote on any question relating to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

7. No action or other proceedings shall lie or be instituted against any member or any member of a subcommittee for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise or purported exercise of the member's functions under this Act.

Immunity of members

8. (1) A person shall not, without the consent in writing given by or on behalf of the Committee, publish or disclose to any other person, otherwise than in the course of the person's duties the contents of any document, communication or information whatsoever, which relates to, and which has come to the person's knowledge in the course of, that person's duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) Any person who knowingly contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) Any person who, having information which to that person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

9. (1) The Committee shall appoint a Secretariat comprising such staff as the Committee may, with the approval of the Minister, determine.

Secretariat of Committee

(2) The Secretariat of the Committee shall be at the Ministry.



,

)

1
/

/