



## Zambia

### Human Trafficking and Organised Crime in Zambia Post November, 2017

Judge Anessie Banda-Bobo

Human Trafficking, also known as modern day slavery, is a global phenomenon which affects men, women and children of all ages across the globe and no country is immune to this scourge. Zambia, like many other countries, is seen as a source, destination and transit country for trafficking in persons (NPA).

Trafficking is defined by a supplementary protocol to the 2000 Convention against Transnational Organised Crime, as follows:

*"Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use by force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving and receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".*

In Zambia human trafficking and organized crime is mainly governed by the *Anti-Human Trafficking Act No. 11 of 2008* the Human Tissue Act and the *Penal Code Chapter 87 of the Laws of Zambia*.

The Penal Code under section 146 provides that:

"A person who—

- (a) Knowingly lives wholly or in part on the earnings of prostitution; or
- (b) In any public place, persistently solicits or importunes for immoral purposes;

commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years;

Provided that a child who commits an offence under subsection is liable to such community service or counseling as the court may determine in the best interests of the child.

(2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such manner as to show that the person is aiding, abetting or compelling the prostitution with any other person, or generally, that person shall, unless the person shall satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution".

Section 147 goes further that a person who knowingly lives wholly or in part on the earnings of another and who aides, abets or compels that person's prostitution with any other person, or generally commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years. Further, where a person compels a child to become a prostitute that person is liable, upon conviction, to imprisonment for life.

Section 149 of the Penal Code provides that: "Any person who keeps a house, room, set of rooms, or place of any kind whatsoever for purposes of prostitution commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty-five years".

Thus any person who keeps premises for the purposes of prostitution is liable to imprisonment of not less than fifteen years and not exceeding twenty-five years.

The Anti-Human Trafficking Act provides for the prohibition, prevention and prosecution of human trafficking and for the filing of and dealing with matters related to human trafficking. More particularly, the Anti-Human Trafficking Act deals with prostitution and human trafficking as follows:

Section 2 of the Act provides that:

"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;"

Further, section 3(1) of the Act provides that:

“Subject to subsections (2) to (11), a person who intentionally and unlawfully traffics 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”.

Subsection 2 further provides that:

“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”.

However, section 3 (3) of the Act stipulates that:

“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”.

Furthermore, section 6 asserts that:

“(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.

(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.”

As can be deciphered from the above provisions, trafficking for sexual exploitation attracts a sentence of 25 years to life imprisonment with hard labour.

In Zambia the Human Trafficking Act and to some extent the Human Tissue Act Chapter 306 of the laws of Zambia deals with the removal of body parts. The preamble to the Human Tissue Act Chapter states that its:

“An Act to make provision with respect to the examination and use of, or of parts of, bodies of deceased persons for therapeutic purposes and purposes of medical education and research”.

Section 3 (11) of the same Act states that:

“Where the victim is trafficked for the purpose of the removal of the victims 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”.

Additionally, section 2 of the Act defines exploitation as including the removal of body parts contrary to the Human Tissue Act, chapter 306 of the Laws of Zambia.

From the above it is patent to see that the Zambian government has made tremendous effort to ensure that it curbs human trafficking for purposes of prostitution and other illegal activities.

To augment the thoughts above and in order to show the efforts and results of the law, the following are but some of the cases that have being dealt with below.

### **High Court Experiences on Cases under the Anti-Human Trafficking Act**

The 2017 National Gender Based Violence Crime Statistics Annual Returns indicated that 9 cases of Human Trafficking were reported. Of the 9 cases, 1 was concluded and a conviction recorded whereas 8 cases were still pending by the end of 2017.

The following according to our statistics are the cases by the High Court segmented by provinces that were recorded on human-trafficking.

#### ***Cases from Western and North-Western Provinces for the Year 2017 to the First Quarter of 2018.***

In the first quarter of 2018, 3 Congolese and a Zambian were prosecuted and convicted for trafficking 15 children comprising five (5) females and nine (9) males respectively. The perpetrators were sentenced by the High Court to 25 years imprisonment with hard labour using section 3(2) of the Anti-Human Trafficking Act.

In another case, Sililo Muyumbana was charged with smuggling of persons contrary to section 9 (1) of the Anti-Human Trafficking Act.

This case involved four victims who were all juvenile females between the ages of eight to twelve. The accused person attempted to smuggle them from Katima Mulilo border into Namibia, but was intercepted. He was sentenced by the High Court to 15 years imprisonment with hard labour.

A further case of human trafficking involved Andrew Sitali, aged 38, of Senanga. He was arrested by the Zambia Police Service for trafficking eight teenage girls to Namibia. According to the Police, the girls were forced to travel through Zambezi District in the North Western Province. Namibian security forces were alerted by the Zambian Police and managed to round up the teenagers. Sitali is now facing eight counts of human trafficking before the Senanga Magistrates' court. He is accused of having lured the girls with promises of higher standards of living in Namibia. A mother to one of the girls said her daughter was not attending school when she was allegedly trafficked to Namibia, although she was of school going age.

#### ***Cases from Eastern Province for the Year 2017 to the First Quarter of 2018***

Paul Mwenze Kazadi and Regina Musowoya were charged with two counts. Under count one, it was alleged that they consented to being smuggled and in count two, they were charged with smuggling of persons. Concerning the latter, the matter involved sixteen people of the same family, the youngest being 6 months old and the oldest 21 years of age. The matter was sent back to the Subordinate Court by the High Court for retrial on a technicality.

Another matter involved Kiputa Leo, who was charged with smuggling of persons. This matter involved Kaila Musuku aged 20, Kishimba Lobe aged 19 and Kishimba Kabwe aged 18. The matter was sent back to the Subordinate Court by the High Court for retrial on a technicality. An examination of cases under the Anti-Human Trafficking Act shows that no one was sentenced under section 3 (3) of the Act.

A careful examination of the cases relating to offences under the Anti-Human Trafficking Act reveals that there was a lack of cases recorded or reported in 2017 and 2018 where the Court was required to apply section 6 (1) of the Act. Most of the cases recorded were with respect to section 3 of the Anti-Human Trafficking Act.

#### **High Court Experiences on Cases with Respect to Illegal Removal of Body Parts**

The Minister of Home Affairs (Mr Kampyongo) on 1st March, 2018 made a Ministerial Statement on suspected ritual killings reported in one of the constituencies of Lusaka.

Seven cases were reported to the Zambia Police between October 21st 2017 to February 24th 2018. The victims in all the seven cases have been males aged between twenty-five and forty years old. The suspected ritual killings are to some extent a result of false beliefs promoted by some traditional healers and herbalists, who claim that the use of human body parts in rituals can help one accumulate wealth. The country has seen a prevalence of body parts harvesting from Albino persons which are used for ritual purposes.

There is currently an ongoing case in the High Court between *The People v Lucky Siame, Lewis Chishimba Bwalya, Christopher Kasapo and Elvis Nyanga HP/202/2016*, wherein the accused persons have been charged with murder contrary to section 200 of the Penal Code. In this matter, it is alleged that they killed Clever Changwe, William Chella, Alex Zulu, Elias Phiri, Amon Sichamba, Anthony Mwaba and Boris Muzumara between March 5 and April 17, 2016. The suspects are accused of having killed the victims in order to harvest their body parts for rituals in witchcraft.