



UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

A CRITICAL ANALYSIS OF LAWS IN ZAMBIA ON HUMAN TRAFFICKING

BY

EUNICE MWISA NTHANI

BEING A FINAL YEAR ESSAY SUBMITTED TO THE UNIVERSITY OF ZAMBIA,
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DECLARATION

I EUNICE MWISE NTHANI, student number 20065311, hereby declare that I am the author of this directed research paper "A CRITICAL ANALYSIS OF THE LAWS IN ZAMBIA ON HUMAN TRAFFICKING" evaluating the legislation on the problem of human trafficking and that it is the creation of my own ingenuity.

Due acknowledgement has been given where other people's work has been used or cited.

I truly believe that this paper has been presented to the faculty of Law at the University of Zambia for academic work.

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

By

EUNICE MWISA NTHANI

COMPUTER NO. 20065311

Entitled:

A CRITICAL ANALYSIS OF LAWS IN ZAMBIA ON HUMAN TRAFFICKING

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Date: *17th February 2009*

Supervisor: *Mwambi*

MS M LWATULA

DEDICATION

I dedicate this dissertation to my children: Alefa, Malizani, Mteku, Matsauso, and Mavuto and to my beloved late husband David, and to my late Mum.

To my children; you are the special reason why I am working hard in life.

May this particular achievement inspire you to attain greater heights in your future lives.

To my late mum; I thank you for having laid a strong foundation for me, indeed I will forever cherish your wise parental guidance. Mum and dad may your souls continue to rest in eternal peace.

To you all you will forever remain very special people in my life.

ABSTRACT

Trafficking in persons is a modern – day slavery. Annually approximately 600,000 to 800,000 people are trafficked across international borders; millions more are enslaved in their own countries. The common denominator of trafficking scenarios is the use of force fraud or coercion to exploit a person for commercial sex or for the purpose of subjecting a victim to involuntary servitude, debt bondage, or forced labour. The use of force or coercion can be direct and violent, or psychological.

The lack of awareness, failure to detect and identify the victims of trafficking, lack of research and data collection, the nature of the problem and fear or reporting all contribute to this problem. However the most fundamental factor is that which pertains to lack of legal framework to curb the trend.

In Zambia the problem of human trafficking has only emerged as an issue, although statistical data is lacking, the evidence is mounting that more and more people particularly women and children are being recruited and transported across Zambia's borders and around the world.

In view of the above therefore, this dissertation will adopt a critical study of human trafficking and address the issue of the inadequacy of a legal frame work by ensuring that the government enacts laws to protect trafficking victims.

ACKNOWLEDGEMENT

An accomplishment is rarely the achievement of an individual. Similarly, this piece of work has been accomplished only by the Hand of the Almighty GOD.

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TABLE OF STATUTES

- Adoption Act Cap 54 of the Laws of Zambia
- Ant-Corruption Commission Act (1996)
- Employment of young persons and children (Amendment) Act Cap 274 of the laws of Zambia
- Juveniles Act Cap 53 of the Laws of Zambia
- Penal Code Cap 87 of the Laws of Zambia
- The Zambian Constitution Cap 1 of the Laws of Zambia

INTERNATIONAL INSTRUMENTS CITED

- African Charter on the Rights and Welfare of the Child
- The Convention on the Rights of the Child 20 November 1989
- Protocol to prevent, suppress and punish trafficking in persons especially women and children supplementing the united nations convention against translational organised crime
- United Nations Recommendations Principles and Guidelines on Human Rights and Human Trafficking
- The United Nations Conventions Against Transnational organised crime

- ILO Minimum Age Convention (1973) No. 138
- ILO Force Labour Convention (1930) No. 29
- Convention Against the Elimination of all forms of Discrimination Against Women (CEDAW)
- The convention on the right of the child
- The immigration and deportation Act Cap 123 of the Laws of Zambia.

GLOSSARY OF ABBREVIATIONS

IOM	International Organisation for Migration
ILO	International Labour Organisation
NGO	Non Governmental Organisation
IPC	International Program for the Elimination of Child Labour
USA	United States of America
DRC	Democratic Republic of Congo
ACP	Anglican Children's Project
CEDAW	Convention Against the Elimination of all forms of Discrimination Against Women
U.N	United Nations
CATOC	Convention Against Transnational Organized Crime.

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CAUSES OF HUMAN TRAFFICKING

Nobody wherever they may be in the world, leaves their home country without a reason. Leaving means breaking with one's family, loved ones, friends, villages or city, region, country, culture, food, climate and one's home. In short when people leave, they leave everything behind – and often it is all they have ever known in their lives. We may therefore ask what factors impel them to leave home no matter what the costs involved are⁶. The factors underlying the decision to leave home maybe classified into two groups. Firstly, the role of the 'push' factors, in other words factors in the home country such as poverty, unemployment, repression, natural disasters and war which should not be underestimated. It is often a combination of these factors rather than one. For instance a child may come from a poor family or may not be happy at home or the parents may be complicit in the trafficking. Other literature not directly related to trafficking reveals that due to increasing levels of poverty and the rise in HIV/AIDS 'orphans', more children are becoming vulnerable to exploitation whether in Zambia or overseas. Additionally, gender discrimination that favours boys over girls such as more girls dropping out of

⁵ A Counter-Trafficking Handbook for Law Enforcement Officers in Southern Africa-March 2005

⁶ Perspectives on trafficking in Human Beings – ILO 2002

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⁵ A Counter-Trafficking Handbook for Law Enforcement Officers in Southern Africa-March 2005

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school than boys, results in girls often becoming easy targets for traffickers⁷. Further more child sexual abuse is also reported to be on the increase which also leads children to seek refuge away from the source of the abuse⁸.

Secondly, there are 'pull' factors in Western countries that attract people, such as democracy, freedom and promises of employment opportunities. Also not to be overlooked are the numerous success stories, (true or otherwise) and photographs of compatriots who have preceded the potential migrant and images of the western world⁹.

Internal Trafficking

Internal trafficking is related essentially to a movement of children from rural to urban areas in order to work. This involves either moving from surrounding rural areas to the large towns in the provinces or to Lusaka in search of work. Nevertheless in all the provinces there are cases where urban dwellers go to rural areas to recruit children for work as maids and garden boys in towns¹⁰.

These cases usually involve relatives as well. This is a well known practice in Zambia which though culturally tolerated maybe regarded as child trafficking as the children are often over – worked, under paid if paid at all, and are frequently prevented from attending school. Women, men and children who work as domestic workers maybe¹¹ subjected to degrading living and working conditions which are equivalent to the

⁷ Perspectives on trafficking in Human beings brochure country by country report 9th October 2002

⁸ Ibid

⁹ Ibid

¹⁰ International Labour Organisation ILO. 2005 "A global Alliance against forced labour" Global report

¹¹ Ibid

conditions experienced by victims of modern slavery¹². Because this target group works in the privacy of the home, the abuse is usually “invisible”, and often difficult to tackle. Most domestic staff, work long hours starting early in the morning and finishing late at night. They work seven days a week and all year round. Often, this is accompanied by abuse, humiliation and confinement. If a contract has been drawn up at all, its provisions are totally ignored¹³.

Human trafficking and migrant smuggling.

Like human trafficking migrant smuggling is a form of migration in which international criminal groups transport people to distant countries of destination. The word ‘Smuggling’ means forbidden or illegal import and export of goods but can also refer to people. Smuggling is an activity in which people may pay money to organised groups that will help them to enter a country in which they do not have citizenship or a right to a permanent residence through irregular means. Migrant Smuggling, while often undertaken in dangerous or difficult conditions, involves Clients or migrants that have consented or agreed to be smuggled¹⁴. Trafficking victims on the other hand do not agree to be trafficked, they are either abducted by their traffickers or agrees to travel with a trafficker only because they have been made false promises of jobs or opportunities that do not exist in the country of destination. The other difference is that once a migrant has been smuggled into a country of destination and has paid the required fee his relationship with the smuggler comes to an end and the migrant enjoys relative freedom and is not exploited by the smuggler. Unlike a smuggled migrant, a trafficked person is forced

¹² The nature and extent of Child Trafficking in Zambia International labour Organisation (ILO) working paper- 2007

¹³ Ibid

¹⁴ Ibid

to continue her relationship with her trafficker for a long time after they have reached the country of destination. A trafficked person is controlled and exploited and may even be resold to other traffickers who will continue to exploit her. Traffickers make their money by exploiting people in prostitution or forced labour in the country of destination while smugglers charge fees in exchange for helping people to cross borders irregularly¹⁵.

Therefore this chapter seeks to deal with the issue of trafficking in human beings in a way that accurately reflects the reality, and the effectiveness of the legal framework against human trafficking.

Background to trafficking

Trafficking is a very complex and complicated activity. There are many facts to trafficking and very few trafficking are the same. The way the person is recruited, the way they travel how they are passed from one trafficker to another and exploited are varied. Trafficking can happen to women, children and men of any age and from any where and can be across borders or within the same country. The fate of the victim will depend on where they are taken to, what forms of exploitation they are forced into, whether there are authorities there who are aware of trafficking and whether they are able to escape¹⁶.

Trafficking in human beings is an old practice. The most widely known case of trafficking is that of the transatlantic Slave trade in which many Africans were sold and transported to foreign countries as slaves. Human trafficking is currently

¹⁵ Eye on human trafficking. A bulleting of news information and analysis on trafficking in persons in Southern Africa-2004 by International Organisation for Migration (IOM)

¹⁶ The nature and extent of child trafficking in Zambia-ILO working paper-2007

regarded as a contemporary form of slavery because hundreds of thousand of African men, women and children are being forced into situations of forced labour and sexual exploitation both on the continent and abroad every year. Internationally, trafficking in persons has been identified as a serious threat to human security and development by governments, pressure groups and the UN. But for many African governments, the problem has only recently been acknowledged¹⁷.

THE EXTENT OF HUMAN TRAFFICKING IN ZAMBIA

The extent and nature of human trafficking in Zambia is still largely unknown. However Human Trafficking is already a huge problem in the region and is second to drugs as a profit making business for the criminal underworld. After a few high – profile cases the Zambian government has finally taken the problem seriously¹⁸.

In 2005 a Congolese woman was caught trying to smuggle 14 children through Zambia to South Africa. The case received huge media attention, the Zambian government failed to prosecute the woman because the country had no specific law against the crime. After the case of the 14 Congolese children Zambia hastily enacted an Ant-Trafficking law with a minimum penalty of 20 years in prison for a prosecuted offender¹⁹.

According to the IOM research, Zambia is indicated as a country of origin, transit and destination. As a country of origin evidence has shown that Zambian women and children are trafficked from Zambia to Malawi and onto Europe. The traffickers appear to be predominantly Nigerian based in Lilongwe, but who pass through Zambia on their way to Malawi. To facilitate the trafficking the traffickers take the

¹⁷ Ibid

¹⁸ A counter-trafficking handbook for law enforcement officers in Southern Africa (IOM)-2005

¹⁹ Penal Code cap 87 of the Laws of Zambia

victims from Zambia through either Muchinji or Chipata and after providing fake Malawani documents, victims are flown to Europe with the Netherlands appearing to be a popular destination²⁰.

The existence of trafficking humans for sexual and labour is acknowledged even though the extent is not yet known in Zambia, it is also recognised as a country of origin and transit for women and children. Zambia is bordered by seven countries making it a target for traffickers wishing to move people easily through and between neighbouring countries²¹.

There is evidence that Zambian women and children are trafficked for sexual exploitation and also that Zambia is a destination country for labour trafficking as illustrated by a story in a reported Newspaper about a Zambian National who was arrested taking six children into Zambia, the man told the authorities that he was taking them to his farm to work as peasants, the man was fined only 50 Malawani Kwacha, another Zambian National was arrested trying to take 15 children boys aged between nine and 15 years into Zambia, for the lack of a specific charge he was only fined K24,000²².

In March 2008 the media reported on a case of 42 Congolese Nationals who where Intercepted going to South Africa by Immigration Department in Lusaka. Twenty-six of the traffickers were found in Lusaka and repatriated back to Congo while Sixteen were still held in detention in Kabwe. The Immigration officer Ms Mbangweta said that most of the trafficked were women and children, Some children as young as six months old, when they were interviewed they indicated to having being trafficked to

²⁰ Eye on Human trafficking bulleting

²¹ Ibid

²² Ibid

South Africa, she went on to say that, "when people are trafficked, they do not know where they are going and where they are"²³.

As illustrated above it shows that the current legislation is not adequate to address the issue of human trafficking.

Human Trafficking: What is it?

Defining Human trafficking is still an on going debate, but the globally recognised definition of trafficking in persons comes from the protocol, To Prevent, Suppress and Punish in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Trans-National Organised Crime. In this Protocol under Article 3(a) it has defined trafficking in persons as, "The Recruitment²⁴, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abductions of fraud, of deceptions of the abuse of power or of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control of a person over another person, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery servitude or the removal of organs²⁵."

Other Scholars have defined Human Trafficking as an activity in which people are deceived or abducted by individuals or criminal groups, transported to a distant

²³ Ibid

²⁴ UN Protocol to prevent, suppress and punish trafficking persons especially women and children supplement the UN convention agent transnational organisation crime-2000

²⁵ Ibid

location and exploited for financial profits, most often by being forced into prostitution or made to do other works for no pay under poor conditions²⁶.

The crime of Human trafficking is a global problem which is a high low risk activity in many parts of the world. It is called a high low risk activity because traffickers can earn a lot of money by exploiting their victims, yet few countries have a law against this crime of human traffic. The (IOM) International Organization for Migration in their report show that each year an estimated 600,000 – 800,000 men, women and children are trafficked across International borders, a possibly larger number of people are trafficked without crossing borders within their own countries. These activity earn traffickers between 42 billion – 60 billions of Kwacha annually making it one of the highest source of profit for Organised Crime world wide apart from arms and drug trafficking which are believed to be more profitable²⁷.

Although no country in Southern Africa has yet passed a law to criminalise human trafficking, many have signed and/or ratified the protocol which obligates signatory countries to criminalise human trafficking. The story below of a young girl called Sara shows what human trafficking is:- ²⁸

Sara is a victim who was trafficked by an uncle at the age of 18 to South Africa with a promise of a good job and a good pay at a restaurant, but when Sara and her uncle arrived in South Africa her uncle took away her passport and other documents and he told her that she must pay for all her living expenses by working as a prostitute. When Sara refuses she is threatened to be turned over to the Police as an illegal immigrant. Sara therefore agrees to work as a prostitute, when the sex club is

²⁶ Trafficking in human beings from Wikipedia the free encyclopedia-IOM-October 2006

²⁷ 10 M'S South Africa Counter Trafficking Report-2000

²⁸ Ibid

raided by the Police Sara is found to have no documents, she is then deported back to Zambia. Sara is a victim of human trafficking²⁹.

PROBLEM STATEMENT

Human trafficking as illustrated above is a huge problem in the region. However in Zambia the tipping point that forced the government action to come up with a law against trafficking came in the year 2005 when a Congolese woman was caught trying to smuggle 14 children through Zambia into South Africa. The Case received huge media attention when the Zambian government failed to prosecute the woman because the Country had no specific law against the crime. After the case of the 14 Congolese children Zambia enacted an anti – trafficking law which provides a minimum penalty of³⁰ 20 years in prison for a prosecuted offender. The law was brought in line with the International Labour Organisation (ILO) Convention 182 on the Elimination of the worst forms of child labour convention³¹. Under section 143 of the Penal code (Amendment) 2005 Cap 87 of the laws of Zambia specifically addresses “Trafficking” and other related offences such as, Procuring a child or other persons for prostitution which could be used when bringing charges against a trafficker³². Section 143 of the Penal Code stipulates that; “Any person who sells or trafficks in a child or other person for any purpose or in any form commits an offence and is liable upon conviction to imprisonment for a term of not less than twenty years”. However the main weakness in the law now recognised by stake holders is that the new provision does not define the term “traffick” or clearly set out

²⁹ Ibid

³⁰ Working paper on the nature and extent of child trafficking in Zambia ILO-2007

³¹ A counter trafficking handbook for law enforcement officers in Southern Africa 2005 by Marcel Ramkishum, Maciej Pieczkowski, Jonathen Martens-10m 2005

³² Ibid

the elements of the offence³³. The term “trafficking” has also not been defined in terms of the trafficking protocol as it was enacted prior to the U.N Protocol. The statute prohibits the “buying” selling or “bartering” of a person for money or any other consideration, although these relate mostly to acquiring children for human trafficking under the statute the punishment is 20 years imprisonment and a fine with a mandatory compensation to the victim. The limitation of the statute in its definition is potentially narrow in scope³⁴.

Therefore, Zambia can not afford to ignore a problem of this magnitude and it is in this light that this dissertation seeks to investigate the gaps that exist in current legislations coupled with low awareness levels within communities which has made it difficult for the prosecution of trafficking cases, finally this paper shall recommend solutions to the current legislation.

Questions that this paper shall have to answer are as follows:-

- What Human trafficking is, its evolution and what the causes are.
- A critical analysis of the current legislation and its effectiveness; Are these laws adequate?
- What is the government doing to Curb this trend of human trafficking in Zambia.

OBJECTIVES OF THE STUDY

The general objective of the study is to highlight, enhance awareness and understanding and recommend were necessary changes to the current laws.

³³ Ibid

³⁴ The Penal Code Cap 87 of the Laws of Zambia.

A novel area that shall be investigated is the possibility and feasibility of having an independent Act that shall address the issue on Human trafficking as the current legislation has gaps which has made it difficult for the prosecution of trafficking cases.

In order to achieve this multistage project, the following activities shall be undertaken:-

- (i) To conduct a rapid appraisal on Human trafficking from experts, a perception of the current legislation with the ministry of Justice officials and other stakeholders, e.g the International Organisation for Migration (IOM) as well as the International Labour Organisation (ILO) officials respectively.
- (ii) To discuss in light of decided cases Vis-à-vis the current legislation; issues highlighted therein in such cases that have impacted on the evolution of the current legislation on Human trafficking.
- (iii) To conduct interviews with the law enforcement officers at the Ministry of Justice, Home Affairs, The Police (Interpol) on the state of the current legislation and its shortcomings.
- (iv) To make recommendations that are commensurate with our needs as a developing Country in the Curbing of the trend of Human Trafficking.

SIGNIFICANCE OF THE STUDY

The research is and continues to be justified on the basis that as a nation we need an Act that reflects our specific needs as a developing nation. If indeed it is true that legislation in the Western Countries has been put in place, then it is a concluding fact that, such a study is expedient. For this reason it is expediently important that this study be carried out in order to bring to light some of the shortcomings of

section 143 of the Penal Code and other relevant legislation and provide appropriate recommendations to the end.

METHODOLOGY OF STUDY

In order to capture the perception on the legislation of curbing the trend of human trafficking, the study shall use methods of Interviews so as to collect qualitative and quantitative data. Desk research shall also be used, owing to the technical nature of the subject and time limits involved for the capture of a broader population the following institutions and class of people shall be interviewed, Human Rights lectures, Non-Government Organisations, Professional bodies, Citizens, Officials from (IOM), (ILO), Ministry of Home Affairs, Red Cross officials, Immigration officers and others that I shall be referred to the afore mentioned Institutions and professionals.

OUTLINE

The long essay shall consist of five chapters:- **Chapter One:-** Shall trace the evolution of Human trafficking, the background and the causes.

Chapter Two:- Shall critically explore and examine the legal framework currently in Zambia.

Chapter Three:- Shall explore the global laws in the fight against human trafficking.

Chapter Four:- Shall look at the reported incidences in Zambia and their effectiveness on the current legislation and also look at what the government is currently doing to Curb human trafficking.

Chapter Five:- Shall recommend and conclude the dissertation by way of proposing measures dimmed at strengthening the legal framework.

CHAPTER TWO

2.0 THE LEGAL FRAME WORK IN HUMAN TRAFFICKING

2.1 GENERAL INTRODUCTION

Human Trafficking as stated in Chapter one above is labeled at the international level as a very serious crime. Trafficking in human beings is relatively new but serious issues are emerging across Southern Africa. At present, none of the countries in the SADC region have in place a legal or policy framework adequate to deal with this complex phenomenon³⁵. A number of recent cases involving trafficking in Zambia have exposed gaps in the existing legal framework. Hence this chapter shall critically analyse the current laws on human trafficking³⁶.

2.2 LEGAL FRAMEWORK ON HUMAN TRAFFICKING IN SADC COUNTRIES

At present there is no existing regional instrument in Southern Africa concerning the prevention, suppression or punishment on human trafficking. South Africa may be furthest along, having recently enacted a law on child trafficking in the context of broad child protection³⁷. The legislation contains several offences related to child trafficking as well as provisions relating to the core and protection of trafficking in children³⁸.

³⁵ Perspectives on Trafficking in human beings Bronchure GREC Report 9th October 2002

³⁶ Human Trafficking and Modern-day Slavery country by country Report 26th September 2007

³⁷ Eye on Human Trafficking Issue 7, July 2005

³⁸ Ibid

2.2.1 Zambia does not have a specific legal provision criminalizing racteering or participating in human trafficking but it has in place only the general common purpose provision in the Penal Code. Trafficking is being prosecuted under other existing laws such as Immigration Act while persons trafficked into forced labour, or agricultural labour or persons trafficked for the purpose of providing sexual services commercial or non-commercial are not adequately protected and their traffickers are not adequately prosecuted³⁹.

Zambia has enacted several amendments to the penal code aimed at strengthening offences in prostitution and other related sexual offences.

These amendments have also substantially increased the penalties for certain offences such as procurement for prostitution, procuring, defilement by threats or fraud, living on earnings of prostitution, child pornography, kidnapping, abduction for slavery, dealing in practices similar to slavery, forced labour, abduction for sexual purposes, threatening violence, as well as numerous prostitution-related offences⁴⁰.

Other related offences may be found in the following Zambian Acts,

- The Immigration and Deportation Act;
- The Employment of Young Persons' Act (Amended 2004);
- Anti Corruption Commission Act 1996;

³⁹ EYE on Human Trafficking – Report by IOM July 2005

⁴⁰ Penal Code Cap 87 the Laws of Zambia

- Adoption Act;
- Juveniles Act;
- Prohibition and Prevention of money laundering Act 2001⁴¹.

None of these laws capture all the elements of the crime of human trafficking in all forms as required by the U. N. Protocol. However, these provisions could be used to prosecute traffickers for some unlawful conduct in appropriate cases as seen in the Acapella boys case whereby the trafficker Mr. Grimes was charged under the Immigration Act⁴². In other similar cases, traffickers were being charged for kidnapping only. Also offences such as aiding, abetting procuring someone to commit an offence and conspiracy are all criminalized in the general provisions of the Penal Code.

Despite the absence of specific human trafficking laws, all countries in the region have laws in place that could arguably be used to prosecute human traffickers at least in some cases. These can be found in a variety of places including⁴³:-

- * Penal Code or common law
- * Child protection laws
- * Special sexual offences legislation

⁴¹ EYE of Human Trafficking country by country report by IOM – March 2005

⁴² ILO – The Nature and Extent of Child Trafficking in Zambia IPEC 2007

⁴³ Ibid

- * Local By-Laws ie, regulating entertainment or hospitality establishments⁴⁴.

However all these measurements were never designed with human trafficking in mind and therefore they have obvious gaps and limitations, especially in cross border cases or in cases involving labour, rather than sexual exploitation⁴⁵.

2.3 **SADC REGIONAL LEGAL FRAMEWORK**

Most countries in the SADC region have laws regulating or prohibiting forced labour and child labour. In the last several years, several countries in the region including Malawi, Tanzania, Zimbabwe and Zambia have amended their employment / labour legislation so as to strengthen laws against child labour and to bring domestic law in line with international standards⁴⁶.

In Zambia, it is a distinct offence to employ a child or a young person in worst forms of labour as provided for under the Employment of young persons and children Act⁴⁷. However in accordance with this law it is only a crime when it involves employing a child under the age of 18 while in other countries e.g in Tanzania it is a criminal offence not only to employ a child in violation of the child labour and forced labour but also a person who procures it. Therefore, traffickers are not generally identified as trafficking since this is not an offence, instead they are charged for abduction, child stealing or defilement.

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Human Trafficking and Modern-day Slavery country by country Report 26th September 2007

⁴⁷ Employment of young persons and children Act

Immigration officers also noted a case in which young Zambian girls were taken overseas on promises of marriage and school but were used for prostitution, the girls eventually came back to Zambia but the cases were not prosecuted because the traffickers remained outside the country⁴⁸.

In 2003 two girls aged 12 and 14 were trafficked to Ireland by an uncle who used the girls for sexual exploitation. The defendant for the lack of a specific charge was charged for procurement and for defilement, the court granted him bail and he disappeared before the case could conclude⁴⁹.

Therefore, these laws may be very difficult to use in cross – boarder cases because of limitations on extra – territorial jurisdiction. The scope of Zambian laws are too narrow in some cases to reach forced prostitution or child prostitution as well as domestic work, more over, the penalties for violation across the region tend to be quite low and enforcement of the labour laws inadequate. Therefore an effective anti trafficking strategy is required to enforce the current laws⁵⁰.

2.4 **EXTRA – TERRITORIAL JURISDICTION**

Extra-territorial Jurisdiction enables states to prosecute and try offences committed partly or wholly outside national territories. Since trafficking is often a cross-border crime, exposure provisions relating to extra-territorial

⁴⁸ "Morden-day Slavery" The scope of trafficking in persons in Africa. African Security Review, VOL 12 Issue 1 by Fitzgibbon K- 2003

⁴⁹ The Nature and Extent of Child Trafficking in Zambia – ILO - 2007

⁵⁰ Ibid

jurisdiction can help strengthen the state's capacity to reach traffickers and the criminal syndicates behind them⁵¹.

Under current laws, Zambian courts have jurisdiction over criminal offences committed partly inside and partly outside Zambian territory. In addition, Zambian law section 6(1) of the penal code allows courts to exercise jurisdiction over Zambian citizens who do an act outside Zambia would be an offence against the penal code.

Although Zambia's jurisdiction is broader than other countries in the region, it is not broad enough to reach all cross-border crimes involving Zambians. Jurisdiction over non citizens for crimes committed outside Zambia even against Zambian citizens would not be prosecuted by existing laws. Thus, ordinary residents could not be prosecuted in Zambia for crimes committed outside Zambia unless the crime was committed partly within Zambian territory⁵².

Incitement or conspiracies to commit crimes in Zambia from outside the country would also not be prosecutable against non-citizens. One of such a case which has shown Zambian limitations on extra-territorial jurisdiction is a case of a transnational trafficking involving Zambian children, concerning a group of boys who belonged to a choir known as "Zambian Acapella Boys Choir". The boys aged between 11 to 17 years were trafficked to the United States of America in the year 1998 with an American named Keith Grimes for the promise of an American education and a living wage. The reality was just

⁵¹ Human Trafficking and Morden-day Slavery in Zambia. Country by Country Report March 2006 by MOD

⁵² ILO / IPEC working paper on the Nature and Extent of child trafficking in Zambia (2007) p3

a meager diet, an exhausting schedule and nights spent crammed into a trailer. Each time the boys sang, their sponsor collected notes and coins from the appreciative congregation and kept the money for himself⁵³.

After nearly two years of exploitation, three of the older singers began to fight back against Mr Grimes who at the same time ran a Texas based education charity as a scam, as the proceeds from the boy's choir went into his pocket. The police brought in the U.S Immigration Service who investigated the case and Grimes was charged under that Act for the lack of a proper charge or specific charge in human trafficking, however, Grimes died before he could appear in court⁵⁴.

This case clearly illustrates the lack of extra-trans national legislation as those children were never protected by any law in Zambia.

Another case is where a Zambian National was arrested taking six children and two elderly Malawians into Zambia, for the lack of a proper law the man was only fined K50,000.00 and the man was charged for attempted kidnapping of the same children. Another Zambian was arrested trying to take fifteen (15) children, boys aged between nine (09) and fifteen (15) years into Zambia. The man was only fined K24,000.00 for attempted kidnapping which shows the lack of a specific law in Zambia on Human Trafficking and many such cases⁵⁵.

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Criminalization of Human Trafficking and Smuggling Laws. IOM Report 2005

2.5 **AN OVERVIEW OF ZAMBIAN LAWS IN HUMAN TRAFFICKING**

Zambia as stated above has not come up with a specific law to curb the trend of human trafficking. However the tipping point that forced government to take action came in the year 2005 when a Congolese woman was caught trying to smuggle 14 children through Zambia into South Africa as mentioned.

2.5.1 Trafficking is specifically addressed in the Penal Code (Amendment) of 2005, under section 143, with other related offences, such as procuring a child or other person for prostitution which section could be used when bringing charges against a trafficker⁵⁶.

Section 143 of the Penal Code (Amendment) 2005 of Cap 87 of the laws of Zambia provides that "Any person who sells or traffics in a child or other person for any purpose or in any form commits an offence and is liable upon conviction to imprisonment for a term of not less than twenty years." The same as for rape or defilement. However the main weakness in the law now recognized by stake holders, is that the new provision does not define the term "trafficking" or "traffic" or does it set out the elements of the offence. This research has discovered that Tanzania is the only country in this survey that has a distinct offence described as "trafficking" in its existing criminal code (sexual offences special provision Act of 1998).⁵⁷

⁵⁶ Penal Code Cap 87 of the Laws of Zambia

⁵⁷ A Counter Trafficking Handbook for Law Enforcement Officers in Southern Africa-March 2005 by Marcel Ramkishu, Maciej Pieczkowski Jonathan Martens

The other weakness in the Zambian legal framework is that the offence as stipulated in the penal code would not apply to illegal entities engaging in human trafficking. Also the minimum penalty may be problematic. Some stakeholders have questioned whether the provision is workable, given that the minimum sentence precludes adjudication by the subordinate courts⁵⁸.

Secondly, the high minimum sentence limits judicial discretion to apply less severe penalties in appropriate cases⁵⁹.

5.2 Apart from the Penal Code, Zambia has put in place another Anti Trafficking Legislation, which is the Employment of young persons and children's Act mentioned above. Under sections 4b and 17b of this Act, it prohibits the employment of a young person in any worst forms of child labour in accordance with the ILO convention which has defined worst forms' to include trafficking, slavery and slavery-like practices, the use of children in harmful or illicit activities such as prostitution, pornography and trafficking as well as any labour to mean harmful or hazardous. The penalty for these offences is a fine of not less than 200,000 penalty units up to 1,000,000 penalty units or to imprisonment for not less than five years but not exceeding twenty-five years or to both⁶⁰.

Forced labour and trafficking do exist in Zambia and these two issues are linked but are not the same. Not everyone in forced labour is there as a result

Ibid
Ibid

Employment of Young Persons and Children Act (Amended) 2004

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⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Employment of Young Persons and Children Act (Amended) 2004

of trafficking though the vast majority of victims of trafficking end up in forced labour or commercial sexual exploitation⁶¹.

Many Zambians desperate for employment, are willing to accept any promise of a job. Their desperation stems from poverty until poverty is alleviated forced labour and trafficking are likely to continue.

Despite Zambia having ratified ILO convention No. 29 in 1964, not much has been done in terms of forced labour. The findings of this study provide an insight into forced labour and trafficking in Zambia and suggestions on possible interventions⁶².

The weakness of this law also is that, for the purpose of prosecuting human trafficking the key terms such as trafficking and "slavery" are not defined and the law only applies only to persons under 18 years. The law also does not contain a provision for "worst forms of child labour committed outside Zambia's territory jurisdiction hence limiting applicability to internal forms of child trafficking⁶³.

2.5.3 One of the major gaps identified to date by stake holders, is the absence of clear policies or procedures for handling cases of trafficking when they come to the attention of government law enforcement officers or NGOs. In most situations across the region, cases are handled on an ad hoc basis, with mixed results. As part of an effective counter – trafficking strategies, all

⁶¹ The Nature and Extent of Child Trafficking in Zambia ILO-2007

⁶² Ibid

⁶³ Ibid

countries in the SADC region should consider developing a "protocol or⁶⁴ procedures which outlines what should be done, who should be contacted, who should be responsible for what, etc, when a trafficking or suspected trafficking case is identified⁶⁵.

It may be possible to charge human traffickers under certain provisions in the Penal Code, particularly where there is evidence of sexual servitude, sexual cleavance, forced labour or severe forms of labour exploitation, unlawful confinement, debt bondage or "sale"⁶⁶.

However for these offences to be prosecuted, reference is always made to International law, as Zambian case law does not offer any guidance on applying these statutes to contemporary form of human trafficking. Even if these statutes could be used in some cases, Zambia's slavery and abduction provisions provided in the Penal Code under sections 267, 256 and sections 251 and 253 would not reach all conduct defined as trafficking under the UN Protocol⁶⁷.

Section 141 (b) of the penal code provides for procurement for defilement by false pretences or false representations, section 256 provides for the abduction for slavery, which are limited to narrow circumstances because the Zambian Penal Code does not criminalize fraudulent or deceptive "recruitment". Victims of trafficking are often recruited by means of deception, particularly through false promises of employment, marriage or

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ The facts about Human Trafficking for forced labour - country Report 25 July 2008

⁶⁷ Ibid

educational opportunities. Zambia does not have a specific provision criminalizing fraudulent labour recruitment or advertising or is a general fraud provision broad enough to encompass this or similar kinds of conducts⁶⁸.

Although Zambia's penal code addresses some forms of exploitation common in trafficking situations it does not provide adequate protection against other forms of exploitation required by the protocol such as adult forced labour, forced marriage, child marriage, pornography involving adults, debt bondage, removal of organs or all forms of sexual exploitation of children of 16 years and older⁶⁹.

Non – sexual forms of exploitation are only marginally covered by existing criminal laws. The penal code prohibits "slavery" – buying, selling, importing, exporting, receiving etc as already discussed above, while forced labour is addressed under section 263 and wrongful confinement while under section 260 it has have addressed the offences as misdemeanours. Also concealment/confinement of a kidnapped or abducted person are addressed under section 258 and receiving and harbouring a stolen child under section (171(b)) which has provided as more serious crimes but which also are more difficult to prove in trafficking cases. Involuntary removal of body parts are prosecuted as assault or murder/manslaughter as appropriate but are not specifically addressed in the code. Also currently the penal code does not provide for illegal entities⁷⁰.

⁶⁸ Ibid

⁶⁹ Working paper on the Nature and Extent of Child Trafficking in Zambia (ILO) 2007

⁷⁰ Crimes against Children – Interpol 2007

Another Act that has potentially useful provisions for prosecuting trafficking is the Zambia's (Amended) Employment of children and young persons Act (2004). Section 4 A (1) provides that, it is an offence to employ a child or a person under the age of 15 in any 'covered worksite' which is defined as any public or private undertaking including any commercial, agriculture or domestic worksite. Section 4 B (2) provides that children under 13 to 15 should engage in 'light work' not likely to be harmful to the child's health or development and not prejudicial to the child's education or vocation training. The penalty is 200, 000.00 penalty units or imprisonment up to 3 years when prosecuted for the offence⁷¹.

The weakness on this law is that, it is aimed more at addressing child labour and not human trafficking per se. As a result, many of the terms including the term 'trafficking' are not specifically defined and it is not clear from the statute who could be prosecuted under this statute apart from the employer⁷².

Arguably, anyone who procured, offered, caused, aided, abetted, incited or permitted the employment of the child could be held criminally liable for contravening the law, but this has not yet been clearly clarified. Given this limitations it is not clear whether under this Act it would be easier or more difficult to prosecute human trafficking offences⁷³.

2.6 In concluding this chapter it has been clearly illustrated above that the gaps that exist in the current legislation coupled with low awareness levels within

⁷¹ Employment of Children and Young Persons Act (Amended) 2004

⁷² Ibid

⁷³ Trafficking in Human Beings Interpol facts sheet country report (Zambia) 2007

communities has made it very difficult for the prosecution of trafficking cases. The current legislation does not include a workable definition of trafficking which makes enforcement almost impossible. This is why the legislation should be re – drafted so as for the government to address these short comings.

CHAPTER THREE

3.0 ANALYSIS OF THE LEGAL FRAME WORK ON HUMAN TRAFFICKING IN THE SOUTHERN AFRICA AND GLOBALY

3.1 Introduction

Countries to day find themselves having to deal with a crime that violates all fundamental rights. This crime has been called a "modern day slavery" and is common not only in the Southern Africa but across the world, this crime is called 'Human Trafficking'⁷⁴.

3.2 CRIMINALISATION OF HUMAN TRAFFICKING IN THE SOUTHERN AFRICAN REGION

The U.N Protocol on human trafficking provides an internationally recognized legal framework for combating human trafficking and for protecting trafficking persons. The protocol requires member states to establish human trafficking as a serious criminal offence, take appropriate measures to prevent human trafficking, assist victims of trafficking, strengthen border control and improve international co-operation⁷⁵. The trafficking protocol also provides the only recognized deflection trafficking in persons although no country in the Southern region has yet passed a law to criminalize human trafficking, many

⁷⁴ International Organisation for Migration SACTAP Report-2007

⁷⁵ UN Protocol to prevent, suppress and punish Trafficking in persons, especially women and children supplementing the United Nations Convention Against Transnational Organised Crime

counties have signed and or ratified the protocol which obligates signatory⁷⁶ counties to criminalize human trafficking and passed measures to assist and protect trafficking victims. Zambia accended to this protocol and the underlying convention in the year 2005. Zambia by having taken this important step has therefore an obligation to domesticate the provision of that instrument into national laws⁷⁷. However, most of the counties in the Southern Africa have signed the CTOC Protocol, Trafficking Protocol and the Migrant Smuggling Protocols. Many counties have ratified one or more of these protocols, Zambia has acceded to all three protocols. The status of counties who have signed or ratified the above protocols is as shown in the table below⁷⁸.

DATE OF RATIFCATION

COUNTRY	United Nations Convention Against Transnational Organised Crime	The protocol to prevent, suppress and punish trafficking in persons	The protocol against the smuggling of migrants by land, sea and air
ANGOLA	SIGNED	-	-
BOTSWANA	29/08/2008	29/08/2008	29/08/2008
DRC	-	-	-
LESOTHO	24/09/2003	24/09/2003	24/09/2003
MALAWI	17/03/2005	17/03/2005	17/03/2005
MOZAMBIQUE	SIGNED	SIGNED	SIGNED
NAMIBIA	16/08/2003	16/08/2003	16/08/2003
SOUTH AFRICA	20/02/2004	20/02/2004	20/02/2004
SWAZILAND	SIGNED	SIGNED	SIGNED

⁷⁶ United Nations Protocol to prevent suppress and punish Trafficking in persons, especially women and children

⁷⁷ Perspectives in trafficking in human beings brochure-BLEU-UK-GREC-PORT-a & d-9/10/2002

⁷⁸ Zambia's issue paper on human trafficking (10M)-2008

TANZANIA	SIGNED	SIGNED	SIGNED
ZAMBIA	24/04/2005	24/04/2005	24/04/2005
ZIMBABWE	05/05/2006	05/05/2006	05/05/2006

3.3 THE REQUIRED LEGISLATION TO PREVENT HUMAN TRAFFICKING

Human trafficking as already seen in the previous chapters is a despicable practice that has scarred the lives of countless innocent individuals. Therefore the legislation which should be signed into law must send a clear message to individuals who engage in this practice of modern – day slavery that, they ought to be punished to the fullest extent of the law. Through this Ant-Trafficking, law enforcement authorities will be empowered to root out large and small – scale operations that commit this modern and heinous forms of slavery⁷⁹.

One, American Assembly man **Jeff Dinowtz** in an interview with a reporter said, " it is shocking that human trafficking exists in the 21st century in America. New York has finally taken strong actions against this heinous crime by imposing tough penalties on sex and labour traffickers and sex tour operations and by providing a wide array of services to trafficking victims" **Dinowtz** went on to state that legislation to be enacted to fight and prevent human trafficking should include the following provisions⁸⁰:-

- To create a class B felony for those who engage in sex trafficking.
- To create a class D felony for those who engage in labour trafficking.

⁷⁹ Fitzgibbon K2003 "Mordern-day Slavery"
⁸⁰ Southern Africa counter trafficking assistance programme. 10m country by country report 9/2007

- The legislator should remove ambiguity in existing laws to ensure that law enforcement officers can bring felony charges against those who run " prostitution tourism business;
- Provide victims with important services such as emergency housing, access to healthy care, drug addiction treatment, translation services and job training. It also requires law enforcement to co-ordinate with the federal government to assist victims in obtaining special visas that allow them to remain in a state and eventually become eligible for refugee assistance.
- Create an inter – agency task force to recommend best practices for training and outreach to the law enforcement community and to service providers, as well as to gather data on the number of victims and to monitor the effectiveness of the law⁸¹.

The above requirements and more is what every nation requires in enacting laws to curb human trafficking.

3.4 STATES FIGHT AGAINST HUMAN TRAFFICKING

UNITED STATE'S OF AMERICA

The United States Federal Government has taken a firm stance against human trafficking both within its borders and beyond. Domestically human

⁸¹ Ibid

trafficking is prosecuted through the civil rights division and the criminal section of the United States Department of Justice⁸².

Older states used to protect rights within United States borders, under the U.S criminal Act sections 1581 and 1584. Section 1584 makes it a crime to force a person to work against his will. Under section 1581 similarly makes it illegal to force a person to work through "debt servitudes"

New other laws were passed, such as the Victim of Trafficking Violence Protection Act which was past in the year 2000 which laws responded to the curbing of human trafficking in the United States. It allows for greater statutory maximum sentences for traffickers, provide resources for protection of and assistance for victims of trafficking. It also allows many trafficking victims to remain in United States to apply for permanent residency. This law also attempts to encourage efforts to prevent human trafficking Internationally by creating annual country reports on trafficking, as well as by giving financial assistance to foreign counties as real efforts in addressing human trafficking⁸³.

The human rights watch and amnesty International have called on the U.S to improve its measures aimed at strengthening United States move to fully implement the United Nations Protocol to Prevent, Support and Punish Trafficking in Person, Especially Women and Children and the United Nation Conventions Against Trans – National Organized Crimes and for Immigration

⁸² Eye on human trafficking. A bulletin news information and analysis on human trafficking in persons in Southern Africa (ILO) issue paper 7 July 2005

⁸³ Ibid

officers to improve their awareness of human trafficking and support the victims of trafficking⁸⁴.

Several states in America also have written laws to address human trafficking for their borders. Florida has written trafficking statutes criminalizing forced labor, sex trafficking and document servitude, Florida has further provided for mandatory law enforcement training and victim services.

On May 8 2006 Connecticut passed an Act addressing human trafficking that criminalized coerced work and made trafficking a violation of Connecticut RICO Act.

MALAWI

The law commission of Malawi has also initiated a process to develop an anti – trafficking legislation and is taking a leading role in facilitating research and training around human trafficking law enforcement officers. The law commission is currently preparing an issue paper and plans to convene a committee to draft a specific legislation to address the crime of human trafficking⁸⁵.

SOUTHERN AFRICA

The South Africa law commission is currently engaged in a process of developing comprehensive draft legislation on human trafficking consistent with the UN trafficking protocol. In June, 2006 the South African parliament also enacted the first part of the new children's Act containing a chapter on

⁸⁴ Ibid

⁸⁵ A bulletin of news, information and analysis on trafficking in persons in Southern Africa. (IOM) issue 7 July 2005

child trafficking. The chapter contains several criminal offences relating to child trafficking as well as some important provisions relating to the care and protection of trafficked children. Implementation of the Act has been delayed pending enactment of the second half of the children's Act. South Africa has also formed an Inter – Sectoral Task team on human trafficking under the leadership of the National Prosecuting Authority Sexual Offences and Community Affairs Unit Plan of Action to combat child trafficking⁸⁶.

ANGOLA

Angola is a source country for children trafficked for the purpose of sexual exploitation, as well as for forced agricultural labour. Angola has recently made law enforcement efforts, including the country's first human trafficking investigation into a case of six girls who were promised jobs on farms but they ended up being sexually exploited. The government has made commendable efforts in providing basic assistance to trafficking victims. Angola has also made preventive efforts including the commencement of a national plan of action being drafted by the National commission to combat child labour and trafficking in minors⁸⁷.

CONGO DR

The DRC is a source country for men, woman and children internally trafficked by armed groups for various purposes. Child prostitution exist across the country, with personnel from the UN peacekeeping mission to the Congo being accused of sexually exploiting women and girls. The report

⁸⁶ Ibid

⁸⁷ Plant, R "Global perspectives forced labour migration and trafficking" (Geneva ILO) 2003

further states that there has been an increase in trafficking related enforcement activities and that several arrests have been made under related charges, although no trafficking laws exist. Government has made commendable efforts in demobilizing and reintegrating children with armed groups⁸⁸.

MADAGASCAR

Madagascar is a source country for children trafficked internally for the purpose of sexual exploited and possibly forced labour. Madagascar is an emerging leader in the fight against human trafficking on the African Sub – Continent. The government has expressed a strong political will to combat human trafficking and has taken substantial steps to implement a national strategy aimed at its elimination. However, the report states that there is need to improve the record keeping of legal proceedings to enable the compilation of reliable statistics in Anti – Trafficking laws. The report further states that Madagascar has no specific Anti – Trafficking law, but existing penal code statutes outlaw related practices. It is also noted that, several arrests and prosecutions were made during the year 2004 and the government partnered with UNICEF to train 180 police Officers in six provincial cities on how to recognize investigate and prosecute instances of trafficking. The government's efforts were strongest in the area of prevention and awareness⁸⁹.

⁸⁸ Ibid

⁸⁹ Ibid

MAURITIUS

Mauritius is a source and destination country for children trafficked for the purpose of sexual exploitation. The country has however failed to provide evidence of increasing efforts to combat several forms of trafficking in persons. The country's law enforcement, victim awareness raising efforts are very strong. The ministry of women's rights have taken steps to provide assistance to child victims of abuse and sexual exploitation. The university of Mauritius in partnership with UNICEF have constructed a regional centre to facilitate the prevention of child sexual, exploitation in Island Nations⁹⁰.

MOZAMBIQUE

Women and girls are trafficked from Mozambique into South Africa for various forms of sexual exploitation. Although the country's counter – trafficking law enforcement efforts improved in 2004, law enforcement agencies have Unlimited knowledge of trafficking in persons. The government has made modest attempts to provide basic protection for victims of trafficking, but prevention measures remain weak with no national plan in place. The only effort being made is whereby the government has provided counseling and a shelter to victims of trafficking.

⁹⁰ Ibid

TANZANIA

Tanzania is a source, transit and destination country for women and children trafficked for the purpose of forced labour and sexual exploitation. Tanzania is the only country in Southern Africa with laws prohibiting trafficking for sexual exploitation. The country has made commendable law enforcement efforts, including the arrests of 31 suspected trafficking in the year 2004. Despite limited resources the country has taken steps to protect victims of trafficking⁹¹.

ZIMBABWE

Zimbabwe is a source and transit country for women and children trafficked for the purpose of forced labour and sexual exploitation to countries such as South Africa and the UK. Zimbabwe needs to make more efforts to eliminate trafficking as well as to compile accurate trafficking data and to provide victim assistance. The Attorney General's office has developed an Ant – Trafficking Education and Training Programme for Prosecutors and Judges to enable them use other existing laws in addressing trafficking related cases. The government is also committed to prevention and has collaborated with International organizations to develop a regional action plan⁹².

⁹¹ Eye on human trafficking. A bulletin of news, information and analysis on trafficking in persons in Southern Africa 10m 7 July 2005

⁹² Ibid

As seen above, at present there are no existing laws which specifically address the crime of human trafficking. Other instruments are the African Charter on Human and Peoples Rights, the African Charter on the Rights and Welfare of the Child and the Charter on Fundamental and Social Rights in the SADC 2003, this instrument contains many relevant provisions. In these instruments among other things calls on states to take appropriate legislative administrative social and education measures to prevent the abduction, sale of trafficking in children for any purpose or in any form by any person including parents or legal guardian of the child, Art 29 of the African Charter on the Rights and Welfare of the Child, protects children from all forms of economic exploitation and from performing any kind of hazardous work in both the formal sectors of employment also Art 15 protects children from all forms of inhuman or degrading treatment, maltreatment, sexual physical and mental abuse in Art 16. Also the Charter of Fundamental Social Rights in SADC requires states to protect the rights of all workers to safe and fair labour conditions⁹³.

In concluding this chapter information is clear that there are a number of preventive activities being undertaken to fight human trafficking but in general this research shows that there is need by states to improve and strengthen legislation on human trafficking. The current legislation is inadequate and is not comprehensive especially in areas of protection or rehabilitation. It is also noted that punishment of traffickers is left to the

⁹³ Ibid

sensibilities of judges. However in Zambia the government is currently reviewing the law on trafficking and aims to bring it in line with the UN definition of trafficking. Also a draft policy document is also being drawn up to raise awareness and assist with co-coordinating strategies among relevant bodies.

CHAPTER FOUR

4.0 THE SCOPE OF THE PROBLEM OF HUMAN TRAFFICKING IN ZAMBIA

The preceding chapter discussed the problem of human trafficking globally and in Zambia and what steps nations are taking to curb the trend of human trafficking. This chapter will focus on Human Trafficking trends in Zambia.

Human trafficking as earlier stated in preceding chapters is labelled at the International level as a very serious crime, a low risk/high profit business for traffickers, a profound human rights abuse and, a form of Morden Day Slavery. A particular form of violence against women and children; a criminal activity involving complicated organized criminal syndicates in origin, transit and destination, a complex trafficking infrastructure that facilitates the falsification of birth, marriage, travel and other documents, the set up and the organisations, the recruitments of potential victims and the involvement of the corruption of public officials⁹⁴.

Trafficking in human beings is a controversial and dedicated issue. Victims of this phenomenon are often liable in human treatments. However in most countries they are regarded as irregular migrants who face deportations⁹⁵.

Human trafficking is not a new problem in Southern Africa, but governments like Zambia have only recently been willing to tackle the issue head on, with HIV/AIDS, food shortages, education and even military spending gobbling up

⁹⁴ A Counter-Trafficking Handbook for Law Enforcement Officers in Southern Africa IOM-2005

⁹⁵ Ibid

vast amounts of the region's resources, little is left over to address the growing phenomenon of human trafficking. A process in which mostly older men recruit, transport and exploit mostly young, female victims by deception, coercion or by force. One official from the International Organisation of Migration (IOM) in Zambia Olivia Kabukage said that "Human Trafficking is already a huge problem in the region and is second only to drugs as a profit-making business for the criminal underworld. However, after a few high-profile cases the Zambian Government is finally taking the problem seriously, though it is hard to catch anyone because the victims are almost always too scared to talk⁹⁶."

4.1 HUMAN TRAFFICKING TRENDS AND INCIDENCES IN ZAMBIA IN THE RECENT YEARS.

During the course of this research it was found that the problem of human trafficking is mainly associated with prostitution and the main victims are girls and women, most key informants stated that women and children were the main victims of trafficking in Zambia some were in view that both the educated and the uneducated were vulnerable to trafficking due to the high poverty levels in the country⁹⁷. It was however interesting to note that most people interviewed did not consider men to be victims or vulnerable, they said that "men had a stronger will than women". The informant went on to say that "generally for women and girls its just for sexual exploitation mostly, while for men generally it would be for labour where maybe the elements of

⁹⁶ Ibid

⁹⁷ US Department of State, 2007 "The Annual Trafficking in Persons Report – 2007"
<http://www.state.gov/g/tip>.

forced labour comes in because the promises that were made before they were moved were not fulfilled⁹⁸.

The majority of the trafficked victims are trafficked either within Zambia or to other countries. Traffickers do not fit a specific profile and come from a cross-section of society, family member, relatives and friends were cited as major culprits. Traffickers were said to be either male or female and can be Zambians or foreigners, church organisations, charitable institutions, truck drivers, owners of bars and tourism enterprises. Rich individuals were believed to be possible traffickers. Some come as pastors and also charitable organisations e.g as seen in the Acappella Boys Choir case, we heard how they were exploited in America by a charitable organisation that wanted money by using the boys. The informant further said that, family members, friends, people you don't know, people you meet in streets can be traffickers for internal trafficking usually are people within the family system but for international trafficking various nationalities are involved in human trafficking⁹⁹.

The UN Protocol on Trafficking was reflected in the new Zambian legislation contained in the Penal Code (Amendment) Act of 2005¹⁰⁰. Under this Act, the following was made a criminal offence:- section 143 provides as follows: "Any person who sells or traffics in a child or other person for any purpose or is liable upon conviction, to imprisonment for a term of not less than twenty years...." This legislation has provided the basis for at least three

⁹⁸ Investigating forced labour and trafficking. Do they exist in Zambia by Carron Fox- 2008

⁹⁹ <http://www.allafrica.com-march> 2005

¹⁰⁰ Ibid

prosecutions, but is widely considered weak because of the fact that no definition of trafficking is given. Basing upon this provision a 43 year old father was jailed for selling his son¹⁰¹.

The man a Mr Christopher Malama was arrested in March 2006 when he tried to sell his son for K850, 000.00 to a local businessman. Malama a farmer appeared before Kabwe High Court Judge Reuben Mwape, he was committed to the High Court by the Subordinate Court in Serenje for the offence of selling or trafficking in children contrary to section 143 of the Penal Code he was sentenced to 20 years imprisonment with hard labour. This case was the first prosecution under trafficking legislation that was introduced under the Penal Code, prior to this there was no trafficking legislation¹⁰².

The first recognised trafficking case appeared in the year 2000 which involved an Australian National arrested at the Zambia/Zimbabwe border, taking out five Zambian girls aged between 14 and 16 years of age. The girls were supposedly destined for Australia where they would be dancing queens. While there was some evidence that the Australian was trafficking the girls, because of weak legislation resulted in the case being acquired, further more the five girls were hostile witnesses as they still wished to go to Australia and earn the US \$500 dollar per week that they had been promised¹⁰³.

¹⁰¹ The Nature and Extent of Child Trafficking in Zambia

¹⁰² <http://www.Zamnet.zm> 26-01-2007

¹⁰³ Penal Code chapter 87 of the Laws of Zambia

4.2 TRAFFICKING AND FORCED LABOUR WITHIN ZAMBIA

The existence of trafficking of humans for sexual and labour exploitation is acknowledged in Zambia. Zambia is bordered by seven countries, making it a target for traffickers wishing to move people easily through and between neighbouring countries. Zambia is also a destination country for labour trafficking as illustrated by the following newspaper reports where it was reported that a Zambian national was arrested when he was caught taking six children and two elderly Malawians into Zambia. The man told the authorities that he was taking them to his farm where they would work as farm peasants. The man was fined 50 Malawian kwacha but he remained in prison as he was charged for kidnapping for lack of a better charge in a similar report where another Zambian national was arrested trying to take 15 children boys aged between 09 and 15 years into Zambia from Malawi. The man was fined 24 Malawian Kwacha¹⁰⁴.

As a transit country, Zambia is implicated in onward trafficking of refugees and other vulnerable persons from countries like Angola, the Great Lakes Regions and the Democratic Republic of Congo to South Africa furthermore; there is evidence to suggest that children are trafficked on from South Africa or Botswana to Third Countries such as USA, Israel and Russia. This is as seen in the case where a Congolese woman was stopped at a national border of Zambia when she was caught bringing in 14 Congolese girls who were

¹⁰⁴ Investigating forced labour and trafficking. Do they exist in Zambia? By Carron Fox. 2008

being taken to South Africa with the promises of jobs. The International Organisation for Migration along with Non-governmental organisations provided support to the children and the principal trafficker was arrested. However for not having a specific charge she was only fined 2 Million Kwacha and was later released¹⁰⁵.

In March 2008 the media reported on another case involving 42 Congolese nationals who were thought to be victims of traffickers. They were intercepted going to South Africa by the Immigration Department in Lusaka. Twenty – six of the offenders were found in Lusaka and were repatriated back to the Congo DRC, while sixteen were still held in detention in Kabwe, in Central Province¹⁰⁶.

One informant narrated a case of how a Zambian girl was trafficked from Lusaka to Ireland. The girl was lured by a female friend with assurances that she would find a job and even get married to a white man. With this prospect of a job and a good marriage the mother allowed her to go. However, when the girl arrived in Ireland, she was sexually exploited. There was no time to rest as they had to 'work' the whole day and the whole night servicing clients. They were locked in the house and they were not allowed to go out. One day the girl got hold of a phone and made a distress call to her mother back home. The girl was rescued through government intervention¹⁰⁷.

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ International Labour Organisation (ILO) International Programme for the Elimination of Child Labour (IPEC)

In another incidence a 21 year old girl and her friend living in Livingstone were trafficked to Namibia where they laboured under slave-like conditions in the fishing industry. They had to run away from the situation that they endured for close to a year. During the whole time they were paid K50,000.00 each¹⁰⁸.

Also in the year 2000 and 2001 some South Africans used Zambians to recruit 20 young Zambians for a programme known as Camp America. The recruitment agents reportedly came as representatives of a church. The informant said further that the young people were taken to America where their passports were taken away from them. The Zambian who recruited the children is now in South Africa. He cannot come back because the parents of the children who were taken to America have been wondering about them. It is not known what these children are doing in the USA¹⁰⁹.

4.3 INTERNAL TRAFFICKING IN ZAMBIA

As noted above, internal trafficking appears to be the most common form of trafficking in Zambia, affecting both children and adults. Compared with trafficking over international borders, there appear to be more cases of trafficking of boys and men and a wider variety of forms of exploitation.

Many Zambian women and girls involved in prostitution in Zambia appear to be working voluntarily and are therefore not victims of trafficking or forced

¹⁰⁸ Ibid

¹⁰⁹ Ibid

labour. However this research has highlighted isolated cases of internal trafficking for prostitutions¹¹⁰.

Mary a 27 year old woman, was moved to Lusaka by a former neighbour known to the family for business. She did not specify what type of business but she fostered the impression that the business was involved in buying goods in Tanzania and resale in Lusaka¹¹¹. However, upon reaching Lusaka the woman explained to Mary what was expected of her and the three other ladies she found at the house. In the evening they all bathed and went out to bars and night clubs where they could be picked by men and all the money that the men paid was ceased by the so called madam in the morning. After some time Mary ran away and she now rents a room of her own up to day. She says she has never told any of her relatives what transpired with the woman who trafficked her to Lusaka. They all think she was engaged in legitimate trading.

As well as trafficking of adult males, a number of cases of boys being trafficked were also found in places such as Chipata, Katete and Petauke, children have to herd cattle for the employer for about four years, after which they are paid in kind by giving them a cow. These children have been moved from their homes to live with their employer¹¹². The following case was reported by a labour officer in Chipata. "The boy was 17 years old who came from Chipangali area and agreed to look after the man's cattle. When the man was questioned about the arrangement, an informant said "the

¹¹⁰ Outrage over lenient fine for human trafficking, <http://www.irinnews.org> 24 August 2005
¹¹¹ A global alliance against forced labour. Global Report to ILO – Geneva 2005
¹¹² Ibid

agreement was there that he had agreed to employ the boy but when they reached the destination the man changed his mind, the boy was not paid for a year. The boy was just being used with the promise that he would be paid latter. The boy ran away.

In another story, a 15 year old boy lodged a complaint at the labour office that, he was recruited from Madzimoyo area to a hotel in Chipata to sell fritters. The employer refused to pay him wages. The employer was summoned to appear before labour offices and he was made to pay the boy.

Two boys aged 13 and 15 years lodged a complaint that they were not being paid their wages. The children were recruited to look after cattle. The employer was made to pay the boys.

Another case which was reported to the same labour office involved a couple who were trafficked from Petauke to Ndola to work at his farm but the couple were never paid.

4.4 DOMESTIC WORK: What is it?

Domestic work is largely unprotected in Zambia as the workers are "behind doors" where little monitoring of working conditions takes place. The following case involves a girl called Purity who agreed to work as a maid for her aunt when she was 18 years old and was in grade 8. Her aunt promised to pay for school but instead her aunt mistreated her and abused her by making cook kachasu and sell it¹¹³. She went on to say that she worked tirelessly and sold kachasu while her Aunt's two children went to school. She

eventually ran away and was employed by another person who also abused her.

The above cases clearly show that Zambians are being trafficked for sexual exploitation, domestic servitude and other forms of forced labour such as fishing, herding cattle and other jobs. While the dimensions of sexual exploitation and domestic servitude are fairly well understood, the study reveals that there is still a poor understanding of the nature and extent of other forms of forced labour and trafficking. As seen in the above trafficking situations the victims initially agree to travelling as they are promised a job or education. It is only upon arrival that they find out that the promise has no merit by which time they are often unable to leave due to the distance from home and lack of money for transport.

4.5 ZAMBIAN GOVERNMENT RESPONSES TO FORCED LABOUR AND TRAFFICKING IN ZAMBIA

Throughout this research key stake holders and individuals were asked about government or non government activities that were taking place to either prevent or protect victims or prosecute traffickers. While government policies and legislation are still being developed, there is currently little support provided to victims of traffickers as seen above whereby an aunt traffics the girl from Petauke to Lusaka to work as a maid but ends up being abused¹¹⁴.

While government policies and legislation are still being developed, there is currently little support provided to victims of trafficking and weak legislation to enable effective prosecution.

Prevention programmes do exist but are not usually related specifically to trafficking, they include programmes to enable children and adults to receive an education and find work, or improve their lives¹¹⁵.

All these actions can be held to prevent human trafficking and to improve prevention, those working on such programmes should have some knowledge regarding trafficking and forced labour as this would enable them identify actual and potential victims and provide them with appropriate assistance.

¹⁵ Ibid

CHAPTER FIVE

5.0 RECOMMENDATION AND CONCLUSIONS

As stated in the preceding chapters human trafficking has been recognised as a serious and growing social problem by the government of Zambia, although little information exists on the extent of trafficking across the country.

Evidence was also found of child and adult trafficking within Zambia or to South Africa and other countries, predominantly for domestic work and prostitution. Immigration Officers reported stopping numerous individuals whom they believed to be trafficking, but felt unable to prosecute, due to weak laws or lack of awareness. They felt in other instances just to send the victims and trafficking back where they came from. The research found a number of cases of men and boys being trafficked for construction work agriculture, domestic work. Labour migration and human trafficking is very widespread, both internal and cross boarder. Migrant works being away from their homes and desperate to find work are particularly vulnerable to exploitation. But there is very little information available about the situation of Zambian workers abroad because returned migrants and trafficked persons are often unwilling to speak truthfully about their experiences, Also this research found that cross border women resort to prostitution in order to earn extra money in the process they end up being trafficked to other parts of the world with promises of going to earn more money to work in night clubs.

Therefore in view of this paradox this chapter shall recommend measures aimed at strengthening the laws and policies in a quest to finding a lasting solution to the problem of human trafficking and the law in Zambia.

5.1 FINDINGS

The research paper has noted the following:-

- Human Trafficking exists in Zambia.
- There is evidence that Zambia is a destination country, but little information relating to it as a country of transit.
- Trafficked children are frequently from poor households and are trafficked mostly for cheap labour, domestic labour, farm work and commercial sexual exploitation.
- Due to gender inequality and cultural factors, women are more at risk of being trafficked than men.
- Children often become vulnerable trafficking because of the death of one or both parents, mistreatment or a drop in household income.
- The high cost of schooling, lack of school places and children's desire for an education all increase their likelihood of agreeing to leave home non-professionals, community members and children were found.
- Trafficked persons left the homes either independently or with the help of family, once they were aware of the persons predicament.

- Orphans often feel that they have to remain in the exploitative situation as they have no alternative place to stay.
- Transport used to trafficking is predominantly in form of trucks, buses, cars, ships, trains and pontoons.
- Law enforcement and immigration Officers had varying levels of knowledge of trafficking issues resulting in an ad hoc approach to prevention and protection of children. This situation is exacerbated by weak legislation and low level of training which impacts on enforcement capabilities.
- Extensive and porous borders unmanned or ill – equipped border posts and the enabling attitude of some immigration officials all facilitate those wishing to pursue illegal activities.
- No institutional homes or temporally shelter to keep trafficked victims.
- Inadequate legal framework.

5.2 This paper recommends as follows:-

- There should be better coordination among government, NGOs and communities. Existing bodies in districts and provinces such as the District/Provinces Development coordinating committee should provide a platform for discussing issues of human trafficking further there should be synergy of resources among all state holders at all levels. This will make it possible to build a coalition of stakeholders to held in complementing and combat trafficking.

- Sensitisation of communities and district Officers should be as an going programme. The media should be involved in the process of sensitisation. Community radio stations and local newspapers can play a major role in rousing awareness in the community. The media should high light the danger of human trafficking in pubs, airports, churches, mosques, clinics and shopping centres.
- Immigration Officers, Police, Social welfare Officers and government departments that have a responsibility for trafficked persons need to be trained on human trafficking including child trafficking. To support the training resources must be applied to enable the newly trained Officers to carry out their work in identifying and better protecting trafficked persons. Additionally, resources need to be made available to enable government department with access to rehabilitation centres to maintain their upkeep.
- Programme and strategies that are aimed at reducing poverty and promoting economic empowerment of vulnerable groups should be strengthened and scaled up. Poverty reduction and economic empowerment will lead to significant reduction in the crime of human trafficking youth skills trainings and employment creation are also required so that youths are equipped with the vocational skills which will enable them to earn an income. In short the government must develop a national human trafficking protection system aimed at combating the poverty that drives exploitation.

LEGAL FRAMEWORK:

The government should consider the following:-

- Enacting legislation to provide for the administrative, Civil and where appropriate, crime liability of legal persons for trafficking offences in addition to the liability of natural persons. Reviewing current laws administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotel and escort services.
- Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in National laws and detailed guidance is provided as to its various punishable elements. All practise covered by the definition of trafficking such as bondage forced and enforced prostitution should be criminalized.
- Making legislation provision for effective and giving rise to extradition in the case of individuals. Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances including offences involving trafficking in children or offences committee or involving complicity by state officials.

- Making legislation provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible the legislation should specify that the confiscation proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victim of trafficking and the use of confiscated assets to finance such a fund.
- Ensuring that legislation prevents trafficked persons from being prosecuted detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficking persons.
- Ensuring that the protection of trafficking persons is built into anti-trafficking legislation including protection from summary deportation or return where there are reasonable grieves to include that such deportation or return would represent a significant security risk to the trafficking person's family.

5.4 **CONCLUSION**

It is clearly shown in this paper that lack of specific or adequate legislation on human trafficking at National level has been identified as one of the major obstacles in the fight against human trafficking. Therefore there is an urgent need to harmonies legal definitions, procedures and cooperation at the National Regional levels in accordance with International Standards. The development of an appropriate legal framework that is consistent with relevant international

instruments and standards will also play an important role in the prevention of human trafficking and related exploitation.

It can safely be concluded here that human trafficking lack of awareness and an inadequate legal framework in Zambia are really a problem and an urgent solution to stop to the trend has be found.

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