



Zambia - Roydah Kaoma

Human Trafficking and Organised Crime: Ideas, Experiences and Suggestions - A Zambian Perspective

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1. Introduction

Human trafficking is a global crime with telling effects on humanity and the economies of nations. It affects men, women and children of varying nationalities who are stripped of their basic human rights by being trafficked in large numbers across continents. It has been noted that there is a correlation between cases involving human trafficking and other organised crime such as document fraud, drug trafficking, tax evasion, migrant smuggling and money laundering.[1]

According to the United States Agency for International Development (USAID), trafficking is also facilitated by corruption at all levels of the State, especially amongst law enforcement and immigration authorities.[2]

The Zambian Government has noted the negative impact that human trafficking has had on its economy. Zambia is estimated to be losing an average of US\$2.8 billion per year, through financial flows, which are often concealed or disguised using corporate vehicles before they are introduced into the financial system.[3] The Zambian President, Mr. Edgar C. Lungu, speaking at the 72nd United Nations General Assembly in New York, said the Zambian government has remained concerned that Zambia has become a source, transit and destination for men, women, and children subjected to forced labour, modern slavery and human trafficking.[4]

2. Zambian Case Studies

Zambia recorded its first case of human trafficking in December 1999. An Australian male was arrested at the Chirundu border post in the southern part of the country, while trying to export five Zambian teenage girls to Australia for purposes of prostitution. Sadly, the man was acquitted on the ground of inadequate legal provisions.

In 2004 another case of human trafficking occurred when a Congolese woman was caught travelling with 14 children en route to South Africa. Yet again, the laws were inadequate for prosecution, and the woman was only fined two million Kwacha for passport fraud.

In June 2016, 19 Ethiopians suffocated and died in a containerized truck that was carrying 95 people from Tanzania into Zambia. The deaths occurred as the victims were being transported by a suspected human trafficking syndicate in Chembe District in Luapula Province. The victims were bundled in the truck that also contained bags of beans and groundnuts. In coordination with the Zambian authorities, the 76 Ethiopians who survived, including children under the age of 18, were transferred to a protective shelter where they received the required assistance. The bodies of the 19 dead and the survivors were later repatriated to Ethiopia. No prosecution occurred.

Another group of 21 Ethiopians and unaccompanied children were intercepted in the Central Province of Zambia en route to South Africa. They were detained, along with adults who were traveling with them. Due to training that IOM had delivered to first-line officials (including immigration officials), these migrants were released before their cases were taken to court and were returned to their homes with support from IOM.

A group of 40 Ethiopian minors had been sentenced to 15 years' imprisonment in the Central Province for consenting to being smuggled. After months of advocacy by IOM and the UN, the Human Rights Commission and others partners, the President of the Republic of Zambia issued a presidential pardon on 25th May 2016 by on the occasion marking Africa Freedom Day. The 40 children were released from detention and transferred to a safe shelter where they received medical and psychosocial support. They were later returned to their country of origin.

Currently the Zambian authorities are dealing with another case involving 70 Ethiopians who had previously entered Zambia, in a suspected case of human trafficking. After they were intercepted and repatriated back to Ethiopia, they returned to Zambia in unclear circumstances. They were discovered in a house in a residential area. Since the traffickers/smugglers are not known, the authorities are contemplating charging them for unlawful stay and entry under the Immigration and Deportation Act.

3. Anti-Human Trafficking Interventions by Zambia

Zambia acceded to the United Nations Convention against Transnational Organised Crimes, the Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Protocol against Smuggling of Migrants by Land, Sea and Air on 24 April 2005. In 2005, the Penal Code (Amendment) Act No. 15 of 2005 was enacted to include a specific offence of human trafficking. Section 143 criminalised the sell or traffic in a child or other person for any purpose or in any form. The penalty was imprisonment for a term of not less than 20 years. Where the sale or traffic was for purposes of sex the penalty was life imprisonment.

Unfortunately, the term “traffic” or “trafficking” was not defined and the Act did not clearly set out the elements of the offence and also failed to address the equally important components of prevention and protection of victims. In an effort to address the situation, Zambia enacted, inter alia, the Anti-Human Trafficking Act No. 11 of 2008 and the Deportation and Immigration Act No. 18 of 2010.

The Anti-Human Trafficking Act provides for prohibition, prevention and prosecution of human trafficking and for filing of and dealing with matters related to human trafficking. It established a Committee on Human Trafficking and provided for its powers and functions; it established Centres for victims of human trafficking and the Human Trafficking Fund. It also domesticated the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Preamble).

The term “traffic” is defined to mean to recruit, transport, transfer, harbour, receive, or obtain a person, within or across the territorial boundaries of Zambia, by means of: any threat or use of force or other forms of coercion; abduction; fraud or deception; false or illegal adoption of a child contrary to the Adoption Act or any other written law; the destruction, concealment, removal, confiscation or possession of any passport, immigration document or other official identification document of a person; the abuse or threatened abuse of the law or legal process or any other form of abuse of power or of a position of vulnerability; or the giving or receiving of payments or benefits to achieve the consent of the person for the purposes of exploitation {s.2}.

4. Offences, Under the Anti-Human Trafficking Act

Trafficking in persons is prohibited by section 3. The offence attracts a minimum sentence of 20 years and a maximum sentence of 30 years imprisonment {s. 3(1)}. Several other penalties are provided for under this section, e.g. where the victim is a child {s. 3(2)}, or is trafficked for the purpose of engaging the victim in the worst forms of labour or child labour {s. 3(4)}, or is abducted {s. 3(5)}, or the offender is the natural parent, guardian or any other person who has parental responsibilities and rights in respect of a child and the offender trafficked or permitted the trafficking of the child, the imprisonment is minimum 25 years and maximum 35 years.

Where the victim is trafficked for the purpose of sexual exploitation {s. 3(3)}, or the trafficking results in the death of or grievous bodily harm to a victim {s. 3(6)}, the maximum sentence is life imprisonment.

The Act prohibits the destruction, confiscation, possession and concealment of identification documents of a victim in furtherance of human trafficking {s. 5}, using services of a victim or benefitting financially or otherwise, from the services of a victim {s. 6}, and conduct facilitating human trafficking {s. 7}.

An internet service provider is obliged to report to the police any site on its server that contains information relating to trafficking. The penalty for failing to report is a fine not exceeding 300,000 penalty units or imprisonment not exceeding 3 years or both.

The Act prohibits smuggling of persons {s. 9}, harbouring, concealing or providing a safe haven to an offender {s. 10}, aiding and abating the commission of an offence under the Act {s. 11} or attempting to commit an offence under the Act {s. 12}.

Consent by a victim or proof that the victim had previously engaged in prostitution or has any other history of a sexual or criminal nature are not defences under the Act. Where the victim is a child, it is not a defence that the parent, guardian or other person who had parental responsibilities and rights over the child consented to the act. Nor is it a defence that no exploitation of the victim occurred or that the act constituting the offence is a customary practice {s. 21}.

5. Lodging a Complaint and Investigating Human Trafficking Under the Act

Section 22 gives guiding principles when deciding the question whether a person is a victim and what protection they can be offered. Regard should be had to all circumstances of the case.

It is mandatory for an immigration officer, labour inspector, social worker, medical practitioner or nurse; and any person who has reasonable grounds to believe that a person is a victim of an offence to make a report to a police officer. It is an offence for any of them to fail to report.

A police officer who has reasonable grounds to believe that a person is a victim or to whom a report has been made must, make an initial assessment, and unless the report is frivolous, must investigate and if the report is substantiated, without delay, ensure the safety of the victim and refer the victim, if it is a child, to a designated social worker for investigations; or if it is an adult, to a centre for adult victims {s. 25(3)}.

A victim or a person with information concerning the commission of an offence under the Act may file a complaint with a police officer in the area where the offender or victim resides; or the offence occurred. Where the victim is a child, the next friend may file the complaint on their behalf {s. 26 (1) and (2)}. The summary deportation of a victim is prohibited {s. 32}.

Where an order has been made by the High Court, in relation to an investigation relating to an offence under the Act, a police officer, above the rank of inspector, named in the order, may require a bank, financial service provider or a financial institution, to provide customer information for the purpose of investigations. A bank, financial service provider or a financial institution which fails to comply is guilty of an offence {s. 63}.

6. Centres for Victims

Part IV of the Act provides for Centres for victims, minimum norms and standards, programs offered by the centre for children and for adults, tracing of family of trafficked person, rehabilitation of the victim, and provision of health care.

7. Forfeiture of Proceeds of Human Trafficking

Part V of the Act provides for forfeiture of proceeds of human trafficking, including attachment of property {s. 49}, property tracking {s. 50}, seizure and detention of funds used in furtherance of an offence under the Act {s. 51}, forfeiture {s. 52} and implementation of forfeiture orders {s. 53}.

8. Court Orders After Conviction

Where a person is convicted of an offence, property or money connected to the offence, or which was intended to be used to commit an offence, may be forfeited to the State. The court may order that the forfeited money be paid to the Human Trafficking Fund created under section 102 {s. 53(1) (e)}. The monies of the fund are applied for the basic material support of victims; skills training; family tracing; rehabilitation and reintegration of victims.

The court may also order payment of compensation to a victim for damage to property or loss of money; physical, psychological or other injury; or loss of income resulting from the commission of the offence {s.58}. An order for compensation may also be made in favour of the State for expenses incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation and repatriation of the victim {s. 59}.

9. Prevention of Human Trafficking

Section 96 obliges the government to establish public awareness programs or other measures designed to:

(a) Inform and educate persons at risk of becoming victims on issues relating to trafficking in persons, including: (i) common recruitment techniques used by traffickers; (ii) tactics used to keep victims in exploitative situations; (iii) the forms of abuse to which victims may be subjected; and (iv) organisations, institutions or law enforcement agencies that may be approached for assistance or information.

(b) Inform and educate victims on: (i) their rights as victims; (ii) legal or other measures in place to ensure their safety, recovery and repatriation; and (iii) organisations, institutions or law enforcement agencies that may be approached for assistance or information; and

(c) Discourage the demand that fosters the exploitation of victims, especially women and children.

These programs or other measures must: (a) include appropriate measures aimed at reaching rural communities; and (b) be reviewed twice a year in order to determine their effectiveness {s. 96(2)}.

Where a court has reason to believe that a parent or guardian of a child has trafficked the child or allowed the child to be trafficked, the court may: suspend all the parental responsibilities and rights of that person; and place the child in temporary safe care, pending an inquiry {s. 97}. A Court in Zambia has extra territorial jurisdiction in respect of an act committed outside Zambia which would have constituted an offence under the Act had it been committed within Zambia, irrespective of whether the act constitutes an offence at the place of its commission {s. 99}.

10. Committee on Human Trafficking

This is established under section 100. Its functions are spelled out in section 101 to:

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

- (b) Make recommendations for a national plan of action against human trafficking, monitor and report on the progress of the national plan of action;
- (c) Advise the Minister on policy matters connected with trafficking in persons;
- (d) Provide advice on the investigation and prosecution of trafficking cases;
- (e) Propose and promote strategies to prevent and combat trafficking in persons;
- (f) Liaise with government agencies and non-governmental organisations to promote the rehabilitation and re-integration of victims;
- (g) Prepare guidelines for disbursements from the Fund;
- (h) Keep abreast with international and regional developments and standards on trafficking in persons; and
- (i) Deal with any matter relating to human trafficking.

11. Challenges in the Implementation of the Act

Lack of coordination between police and immigration; Problem in distinguishing human trafficking from smuggling; Capacity challenges – officers are not adequately trained; Lack of immigration transit centres to keep victims; Lack of sensitisation despite government mandate under section 96; High cost of border investigations.

The United States Department of State has also noted the following in the Trafficking in Persons Report, 2017 at pp. 428 and 429:

The Zambian government reported 23 trafficking cases from five provinces, involving 9 adult victims (5 men and 4 women), and 14 child victims (5 boys and 9 girls) but that the government did not convict any traffickers and did not report initiating any prosecutions, compared to initiating nine prosecutions in 2015. The Zambian government did not investigate or prosecute companies for labour trafficking in the mining and agricultural sectors and had limited capacity to monitor these sectors; allegedly, large or foreign companies and foreign governments exerted influence over officials, preventing investigations. Despite these allegations, the government did not report any investigations, prosecutions, or convictions of government officials complicit in human trafficking offences. The Zambian government made decreased efforts to assist victims. Officials often conflated cases of smuggling and trafficking and government did not increase its capacity to adequately protect victims for the second year in a row. Of the potential victims identified, 11 were labour trafficking victims and 3 were sex trafficking victims. The Zambian government referred the 1 victim it identified to protective services. An international organisation and a Non-Governmental Organization provided care for the victims identified and facilitated the repatriation of 10 victims who received protective services in their country of origin. The Zambian government provided increased financial support to organisations providing victim assistance; however, it continued to rely on international organisations and local Non-Governmental Organisations to provide the majority of care.

12. Key Recommendations

In the above-mentioned Report, the United States Department of State has made the following suggestions: Proactively identify trafficking victims and refer them to protective services; Amend the trafficking law to define child sex trafficking as not requiring force, fraud, or coercion be used and to define trafficking as a crime that does not require movement of the victim; Vigorously investigate and prosecute sex and labour trafficking cases involving both children and adults; Formalise and implement victim identification and referral procedures, and train law enforcement and social welfare officials on their use; Train police, immigration officials, prosecutors, and judges on investigating and prosecuting trafficking crimes; Expand the availability of shelters and ensure alternative services are available for male victims; Increase the number of labour inspectors and ensure they are trained on trafficking indicators; Improve coordination among service providers to prevent detention of male victims and strengthen coordination and collaboration efforts between relevant ministries; Develop and adopt an updated multi-year national anti-trafficking strategy and action plan and continue to conduct public awareness campaigns; and compile and make public information on trafficking cases and trends

13. Review of the Law

In 2015, the Zambia Law Development Commission led a law review process under the United Nations Joint Programme for the protection of migrant children from trafficking and exploitation to upgrade the law on vulnerable children and migrants, to establish mechanisms for the enforcement of these laws and to ensure the laws incorporate international and regional human rights standards and adequately protect against and

mitigate the vulnerability of children and other populations at high risk of traffic, abuse and exploitation. The law review process culminated in the drafting of the Anti-Human Trafficking (Amendment) Bill 2016 and the Immigration and Deportation (Amendment) Bill 2016.

14. Other Key Legislation & Relevant Institutions

In a coordinated effort to curb human trafficking and other organized crimes, the Zambian Government has also enacted the Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) legislation, and set up the institutional framework, to deal with money laundering, Financing of Terrorism, forfeiture and seizure of proceeds of crimes, prevention of corruption, fraud and financial crimes, among others.

The Anti-Money Laundering Unit established under the Prohibition and Prevention of Money Laundering Act No. 14 of 2001 as amended by Act No. 44 of 2010, has the mandate to provide general or specific policy directives and to advise Government on measures required to prevent and detect money laundering in the Republic of Zambia.

The Financial Intelligence Centre, established under the Financial Intelligence Centre Act No. 46 of 2010 is the sole designated agency responsible for the receipt, requesting, analysing and disseminating of the disclosure of suspicious transaction reports to law enforcement agencies and other foreign designated authorities pursuant to the Financial Intelligence Centre Act. The Financial Intelligence Centre (Amendment) Act No. 4 of 2016, included administrative sanctions, inspection powers for the Centre on Anti-Money Laundering/Countering the Financing of Terrorism matters and the role of the Centre as supervisor of last resort on reporting entities.

Reporting thresholds for currency transactions were introduced through the Financial Intelligence Centre Prescribed Thresholds Regulations, No. 52 of 2016. Any currency transaction equal to or above US\$10,000 for both corporations and individuals should be reported to the Centre {Republic of Zambia Financial Intelligence Center Trends Report, 2016, p. 4}.

Establishment of units such as the Financial Intelligence Centre, Financial Crimes Unit and Asset Forfeiture Unit to supplement law enforcement officers in the investigation and prosecution of organised crime is crucial in the successful prosecution of such crimes, which are quite technical.

15. Conclusion

It is imperative for State Parties not only to rely on legislative interventions but also to fully utilise other interventions in the investigation and prosecution of offenders. This would entail further enhancing cooperation and coordination amongst stakeholders within and outside the justice system, be it at national, regional and international levels.

END NOTES

[1] Republic of Zambia Financial Intelligence Center Trends Report, 2016 p. 11.

[2] Framework and Comprehensive Legislation to Combat Human Trafficking in Zambia Development of an Effective National Policy, USAID, 2006, p. 9.

[3] Republic of Zambia Financial Intelligence Center Trends Report, 2016, p. 16.

[4] www.daily-mail.co.zm, 22 September, 2017.