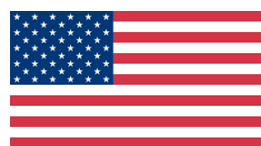




# POCKET HANDBOOK ON TRAFFICKING IN PERSONS, OFFENCES AND PENALTIES



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## THE ANTI-TRAFFICKING IN PERSONS POCKET HANDBOOK TECHNICAL WORKING GROUP

| NAME                    | INSTITUTION                              |
|-------------------------|------------------------------------------|
| Felix Kaoma             | Judiciary                                |
| Amy Masoja              | Judiciary                                |
| Arnold Kasongamulilo    | Judiciary                                |
| Elvis Chilufya          | Judiciary                                |
| Chikuba Siasweka Muluti | Zambia Police                            |
| Edward Simukonde        | Zambia Police                            |
| Sambala Chabula         | Zambia Police                            |
| Kalaluka Mutafera       | Zambia Police                            |
| Laika Zunduma           | National Prosecution Authority           |
| Patrick Nyambe          | National Prosecution Authority           |
| Judith Mayiya           | National Prosecution Authority           |
| Obed Mushibwe           | National Prosecution Authority           |
| Kazembe Mutebela        | Drug Enforcement Commission              |
| Kako Tembo Mvula        | Anti-Corruption Commission               |
| Albert Zonzi            | Department of Immigration                |
| Brandon Twambo          | Department of Immigration                |
| Abraham Chafilwa        | Department of Immigration                |
| Mike Manyama            | Department of Immigration                |
| Boris Mulengu           | Anti-Trafficking in Persons Department   |
| Agness Muluchi          | Anti-Trafficking in Persons Department   |
| Knowledge Mareyanadzo   | International Organization for Migration |
| Natasha Amanda Chuni    | International Organization for Migration |
| Nomsisi Pearl Wonani    | International Organization for Migration |
| Chana Chelemu Jere      | National Consultant                      |

## FOREWORD

The Zambian criminal justice system plays an important role in combating the growing vice of trafficking in persons (TIP) in Zambia. Law enforcement officers and front-line officials from different institutions play different roles in preventing the crime, protecting the victims of trafficking and prosecuting the perpetrators of the vice. They however face challenges, that include, failing to detect the offence, difficulty in investigations and evidence gathering due to the complex nature of the offences resulting in difficulties of securing successful convictions. The rationale behind the creation of the law enforcement pocket handbook is to assist front-line officials and officers in the Zambian criminal justice system in their day-to-day duties and to ensure that TIP cases are dealt with in a proficient manner.

This Pocket Handbook provides a comprehensive guide on TIP cases and related offences, as provided for, inter-alia, in the Anti-Human Trafficking Act, the Immigration and Deportation Act, the Cyber and Security Act, the penal Code, the prohibition of the money laundering Act, the Children's Code Act. It also offers a guide on possible defences available for each offence as well as alternative offences. It is hoped that the pocket handbook will positively assist law enforcement officers and all frontline officials to successfully identify, investigate, prosecute and adjudicate TIP cases.

I wish to acknowledge the invaluable contribution by the International Organization for Migration (IOM). I also wish to commend the state advocates, prosecutors, investigators, the judiciary and the Anti-Human Trafficking Department who contributed significantly to this work.

Hon. Jack J. Mwiimbu, MP.

MINISTER

**MINISTRY OF HOME AFFAIRS AND INTERNAL SECURITY**

## ACKNOWLEDGEMENTS

The development of the Pocket Handbook on Trafficking in Persons, Offences and Penalties was based on a consultative process involving all key stakeholders in the Zambian criminal justice system. Appreciation is extended to the state advocates, prosecutors, investigators, the judiciary and the Anti-Trafficking in Persons Department who significantly contributed to the drafting, review and adoption of this Pocket Handbook.

Special appreciation is extended to the International Organization for Migration (IOM) and the United States Government for the technical and financial support that contributed to the realization of this Pocket Handbook. Further, I wish to appreciate the drafters of this Pocket Handbook for their tireless commitment demonstrated throughout the development of this Handbook.

Dickson Matembo  
PERMANENT SECRETARY – CRIAR  
**MINISTRY OF HOME AFFAIRS AND INTERNAL AFFAIRS**

## INTRODUCTION

Trafficking in Persons (TIP), also referred to as human trafficking, is a crime and a serious violation of human rights. The Government of the Republic of Zambia (GRZ) recognizes that investigation, prosecution, and punishment of offenders are essential components of an effective national response to trafficking. It is widely acknowledged that strong prosecutions help curb impunity for traffickers, ensure justice for victims and access to remedies. An effective criminal justice response acts as a deterrent against future trafficking, contributing to prevention.

Despite legal requirements, traffickers and accomplices are rarely prosecuted. The rate of prosecutions for trafficking offenses remains low globally. For instance, in 2010, there were only 6,017 prosecutions worldwide, with fewer convictions and victim identifications. Prosecution is crucial for justice, victim protection, and prevention. It contributes to dismantling trafficking networks and holding perpetrators accountable.

Trafficking in Persons is criminalized because of the severe consequences that it has on an individual, the community and the state. It poses serious security threats and instability to the country and fuels corruption at various levels. Victims of trafficking in persons are exposed to a wide range of abuses and violence. Some victims disappear and never return to their place of origin whilst others return sick, injured, disfigured and traumatized.

Prosecuting of trafficking in persons cases is extremely complex. Some of the factors that complicate successful prosecution of TIP cases include, logistical challenges associated with investigating cross border TIP cases, limited cooperation, inadequate resources, insufficient training, and capacities as well as differences in laws across countries which create obstacles in investigating, arresting, extraditing, and prosecuting offenders. Moreover, in order to prove a case of trafficking in persons, each of the constituent elements of trafficking may require a constellation of circumstances. In addition, some of the offences fall in more than one provision of the laws of a country and therefore need a critical eye and knowledge of the law to appropriately match the facts and a particular provision of the legislation.

Whereas Zambia domesticated the Palermo Protocol by enactment of the Anti-Human Trafficking Act No.11 of 2008 as amended by Act no.16 of 2022, successful prosecution of trafficking in persons cases has been very low. It is for this reason that the criminal justice pocket handbook has been developed by the Ministry of Home Affairs and Internal Security in collaboration with National Prosecution Authority, Ministry of Justice, Drug enforcement commission and the Anti-Corruption Commission with financial support from the International Organization for Migrants (IOM). The handbook is intended to be a quick reference guide to aid the criminal justice system and front-line officials in their line of duty.

## PURPOSE OF THE POCKET HANDBOOK

### 2.1 Objective of the Pocket Handbook

The Pocket Handbook on Trafficking in Persons, Offences and Penalties is of paramount importance in the fight against human trafficking in Zambia. It underscores trafficking in persons as a serious crime that thrives on exploitation of victims.

The primary purpose of this Pocket Handbook is to guide criminal justice practitioners in identifying TIP cases, investigating and prosecuting human trafficking cases. Whereas the patterns and dynamics of TIP may not be new, countries have only started recently to come up with frameworks criminalizing the vice. Zambia domesticated the Palermo Protocol by enactment of the Anti-Human Trafficking Act No.11 of 2008 which was subsequently amended by Act no.16 of 2022.

The Pocket Handbook presents practitioners with a summary of offences in terms of the (i) the essential ingredients of the crime, (ii) possible defences that may be raised against the charges and (iii) alternative charges that may also be levelled under the prevailing circumstances. The Pocket Handbook also summarizes the penalties applicable to the different cases. Furthermore, the Pocket Handbook highlights samples of previous indictments related to trafficking cases.

The Pocket Handbook does not focus on evidential issues but on substantive laws applicable to different situations, to bring out as much as possible, offences premised on a particular provision. The pocket handbook presents different crimes chargeable under the Zambian Anti-Human Trafficking Act so that practitioners can choose the most appropriate provision of the law which best fits their facts.

The Pocket Handbook therefore aims to;

- raise awareness and equip officers in the national criminal justice system to effectively and successfully identify, investigate, prosecute and adjudicate TIP cases,
- enhance the capacities of the criminal justice system to bring traffickers to justice, respect the rights and needs of victims and promote a consistent criminal justice response to trafficking in persons.

It is hoped that by highlighting the different offences under the Anti-TIP Act, the Pocket Handbook will contribute to timeous identification of appropriate provisions and successful prosecutions.

### 2.2 Targeted Users of the Handbook

This Pocket Handbook targets all the practitioners in the criminal justice system, namely the immigration officers, police, prosecutors and judges, other front-line officers and civil society stakeholders that are involved in the identification, profiling, investigation, prosecution and adjudication of TIP cases in Zambia.

## **2.3 Structure of the Pocket Handbook**

The Pocket Handbook is divided into four main parts to cover the cross section of relevant topics.

### **2.3.1 Part 1: Overview of Trafficking in Persons**

This section provides an overview of trafficking in persons in terms of the definitions of trafficking in persons, exploitation, constituent elements of trafficking, child trafficking, human smuggling among others. The section seeks to increase the understanding of the criminal justice officials on trafficking in persons in line with the amended Anti-TIP Act.

### **2.3.2 Part 2: Charges, Ingredients, Possible Defences, Alternative Charges and Applicable Penalties**

This section gives an overview of the different offences under the Anti-TIP Act IN Zambia. Each of the offences is broken down into (i) ingredients of the offence, (ii) possible defences that may be raised against the charges, (iii) Alternative charges that may be raised against the charges outside the Anti-TIP Act and (iv) applicable penalties prescribed in the Anti-TIP Act, as amended.

### **2.3.3 Part 3: Guidance to Prosecutors and the Court on Sentences**

This section provides guidance to prosecutors and the court on sentencing. It also presents some specimen formal legal documents that outline the charges against an accused individuals and served as the foundation for the criminal proceedings.

## PART ONE

## OVERVIEW OF TRAFFICKING IN PERSONS

### 3.1 Criminalization of Trafficking in Persons under the Act

Section 3 of the Act criminalizes trafficking in persons. Part II, Section 3(1) of the Act states that Subject to subsections (2) to (11),

*a person who intentionally and unlawfully traffics another person commits an offence and is liable, upon conviction, to imprisonment for a term of not less than twenty years and not exceeding thirty years.*

### 3.2 Definition of Trafficking in Persons

This section generally defines the offence. Section 2 of the Anti-Human Trafficking (Amendment) Act No. 16 of 2022 defines trafficking in persons as:

*“trafficking in persons” means to recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*

### 3.3 Definition of Exploitation

The Anti-Human Trafficking Act defines exploitation to include:

- ✓ All forms of slavery or practices similar to slavery, including debt bondage or forced marriage;
- ✓ Sexual exploitation;
- ✓ Servitude;
- ✓ Forced labour;
- ✓ Child labour;
- ✓ The removal of body parts;
- ✓ Forced involvement in armed conflict; or
- ✓ Any labour or services obtained through threats or other forms of coercion or the abuse of power or of a position of vulnerability.

### 3.4 Elements of Trafficking in Persons for Persons Above 18 Years

Based on the Palermo Protocol definition, Article 3(a) and Section 2 of the Anti-Human Trafficking Act, trafficking in persons has three constituent elements:

- ✓ the **Act** (what is done),
- ✓ the **Means** (why is it done) and
- ✓ the **Purpose** (always exploitation). The table below highlights the element as provided for by the Anti-Human Trafficking Act.

**Table 1 Showing Elements for Trafficking in Persons Above 18 Years**

| ACT                                                                                                                                                                                                                                 | + | MEANS                                                                                                                                                                                                                                                        | + | PURPOSE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (What is done)                                                                                                                                                                                                                      |   | (How it is done)                                                                                                                                                                                                                                             |   | (Why it is done)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| The Act:                                                                                                                                                                                                                            |   | By means of:                                                                                                                                                                                                                                                 |   | For the Purpose of Exploitation, including:                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <ul style="list-style-type: none"> <li>○ Recruit,</li> <li>○ transport,</li> <li>○ transfer,</li> <li>○ harbour,</li> <li>○ receive or</li> <li>○ obtain</li> </ul> a person, within or across the territorial boundaries of Zambia |   | Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person |   | All forms of slavery or practices similar to slavery, including: <ul style="list-style-type: none"> <li>○ Debt bondage or</li> <li>○ forced marriage;</li> <li>○ Sexual exploitation;</li> <li>○ Servitude;</li> <li>○ Forced labour;</li> <li>○ Child labour;</li> <li>○ The removal of body parts;</li> <li>○ Forced involvement in armed conflict; or</li> <li>○ Any labour or services obtained through threats or other forms of coercion or the abuse of power or of a position of vulnerability</li> </ul> |
| <b>NOTE: As long as one condition from each of the 3 elements is met, the result is TRAFFICKING</b>                                                                                                                                 |   |                                                                                                                                                                                                                                                              |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

### 3.4.1 Act

The act of trafficking a person refers to the measures employed by traffickers (i.e. what is done) to introduce or maintain a victim in the trafficking scenario. The acts – as detailed in the Protocol above – are not criminal per se in isolation. These acts become illegal when coupled with two additional elements: 1) indication that the act was committed without the consent or through the vitiated consent (implying the absence of a fully informed and freely given consent) of the victim and 2) indication that the intent of the conduct was exploitation.

### 3.4.2 Means

The means (i.e. how) used to traffic a person refers to the manner in which a trafficker introduces or maintains an individual in the trafficking scenario. Means employed by traffickers can include fraud, deception, and the abuse of power or of a position of vulnerability and can occur with or without the use of any overt (physical) force. The “use of power or of a position of vulnerability” contained in Article 3 of the Protocol “is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the exploitation involved.” This is to acknowledge that many trafficked persons are under the influence of someone to whom they are vulnerable, for example, a person holding a position of official authority or a parent or spouse.

### 3.4.3 Purpose (Exploitation)

The purpose of trafficking in persons is ultimately exploitation. The definition of trafficking in the Palermo Protocol includes the following forms of exploitation: prostitution of others; sexual exploitation; forced labour; slavery or similar practices; servitude and removal of organs. According to the Protocol, exploitation covers the forms of exploitation that shall be included “at a minimum.” This means that the list provided in Article 3 is non-exhaustive. Individual states may include other forms of exploitation in their domestic criminal law, depending on national experiences with different forms of trafficking. “Exploitation or prostitution of others” and “sexual exploitation” are not defined in the Palermo Protocol or elsewhere in international law. They were intentionally left undefined to allow all States to ratify the Palermo Protocol, irrespective of their domestic laws relating to the legality or illegality of prostitution.

### 3.5 Definition of Child Trafficking

Section 3A. (1) of the Anti-Human Trafficking (Amendment) Act No. 16 of 2022 prohibits child trafficking.

Section 3A. (1)

*“A person who recruits, transports, transfers, harbours, receives or obtains a child, within or across the territorial boundaries of Zambia, for the purpose of exploitation, commits an offence and is liable on conviction, to imprisonment for a term of not less than thirty years and may be liable to imprisonment for life.”*

Section 3A. (2)

*“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, without proof of force, fraud or coercion, is sufficient to establish the offence of trafficking of a child.”*

Child trafficking: The recruitment, transportation, transferring, harbouring, receiving or obtaining of a child, within or across the territorial boundaries of Zambia, for the purpose of exploitation.

### 3.6 Elements of Trafficking in Persons for Persons Below 18 Years

Based on the Protocol definition, Article 3(c) and Section 3A (1) of the Anti-Human Trafficking Act, child trafficking has two constituent elements:

- ✓ the **Act** (what is done), and
- ✓ the **Purpose** (always exploitation).

## Elements for Trafficking in Persons (Persons Below 18 Years)

| ACT                                                                                                                                                                                                                                      | PURPOSE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (What is done)                                                                                                                                                                                                                           | (Why it is done)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>The Act:</b> <ul style="list-style-type: none"> <li>○ Recruit,</li> <li>○ transport,</li> <li>○ transfer,</li> <li>○ harbour,</li> <li>○ receive or</li> </ul> obtain a person, within or across the territorial boundaries of Zambia | <b>For the Purpose of Exploitation, including:</b> <p>All forms of slavery or practices similar to slavery, including:</p> <ul style="list-style-type: none"> <li>○ debt bondage or</li> <li>○ forced marriage;</li> <li>○ Sexual exploitation;</li> <li>○ Servitude;</li> <li>○ Forced labour;</li> <li>○ Child labour;</li> <li>○ The removal of body parts;</li> <li>○ Forced involvement in armed conflict; or</li> <li>○ Any labour or services obtained through threats or other forms of coercion or the abuse of power or of a position of vulnerability</li> </ul> |
| <b>Note: It is not necessary that there be force, fraud or coercion for trafficking to occur. In the case of a child, not only will consent fail as a defense, but there need be none of the prescribed means as well.</b>               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

### 3.7 Children as a Special Case

The Anti-Human Trafficking (Amendment) Act No. 16 of 2022, Section 3A (1), recognizes the special situation of children, which removes the need for means to be present for trafficking to occur. In other words, for children, it is not necessary that there be “threat, or use of force, or other forms of coercion, of abduction, or fraud, of deception” for trafficking to occur. For example, if a parent arranges to have their child transported to a situation where they are forced to work (e.g. begging on the streets), this can be considered trafficking even if the child is a willing participant and is returned after a period of time.

### 3.8 Consent as a Defence

Trafficking per se cannot involve consent. In addition, the presence of consent of the victim at one stage of the process cannot be taken as consent at all stages of the process. If there has not been consent at every stage of the process it means that the case is one of trafficking. This means that if a person consented to work abroad or to enter a country illegally, but did not consent to exploitation, an offence has been committed. In the case of children, consent is irrelevant because a child cannot voluntarily or willingly enter into an arrangement that resulted in trafficking, even if the child’s parents were to give their consent.

### **3.9 Grounds that Cannot Serve as Defence under the Anti-Human Trafficking Act**

The Anti-Human Trafficking Act lists non-defences in relation to trafficking cases. Section 21 of the Act provides that:

- “(a) it shall not be a defence to a charge for an offence under this Act to prove that a victim consented to the act constituting the offence;*
- (b) that the victim had previously engaged in prostitution, or has any other history of a sexual or criminal nature;*
- (c) where the victim is a child, that the victim, the parent, guardian or other person who has parental responsibilities and rights in respect of the child consented to the act constituting the offence;*
- (d) that the exploitation of the victim did not occur; or*
- (e) that the act constituting the offence is a customary practice”.*

### **3.10 Definition of Human Smuggling**

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

## PART TWO

## CHARGES, INGREDIENTS, POSSIBLE DEFENCES AND ALTERNATIVE CHARGES

### 4.1 Intentionally Engaging in Trafficking in Persons

**Refer to Section 3 (1) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person intentionally engages in trafficking in persons.

#### 4.1.1 Ingredients of the Offence:

- i) Offender should have committed the acts relating to trafficking in persons
- ii) Any one or more of these acts: recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia; and
- iii) Any one or more of the means: threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and
- iv) The purpose i.e. exploitation of a victim of trafficking

#### 4.1.2 Possible Defences:

- i) Absence of intention to exploit
- ii) Absence of knowledge
- iii) No acts related to the Act, Means and Purpose of trafficking were committed
- iv) Non-identification of the offender

#### 4.1.3 Alternative Charges:

- i) Buying or disposing of any person as a slave C/S 261 of the Penal Code
- ii) Habitual dealing in slave's C/S 262 of the Penal Code
- iii) Unlawful entry into Zambia C/S 11 and Section 56 of the Immigration and Deportation Act
- iv) Kidnapping from Zambia C/S 251 and Section 254 of the Penal Code
- v) Intent to deceive C/S 344(a) of the Penal Code (Note: No penalty included)

#### 4.1.4 Prescribed Penalties

- i) 20 – 30 years

## 4.2 Attempting to Engage in Trafficking in Persons

**Refer to Section 3 (1) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person attempts to engage in trafficking in persons.

### 4.2.1 Ingredients of the Offence:

- i) Offender should have committed the acts relating to trafficking in persons
- ii) Any one or more of these acts: recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia; and
- iii) Any one or more of the means: threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and
- iv) The purpose i.e. exploitation of a victim of trafficking

### 4.2.2 Possible Defences:

- i) Absence of intention to exploit
- ii) Absence of knowledge
- iii) No acts related to the Act, Means and Purpose of trafficking were committed
- iv) Non-identification of the offender

### 4.2.3 Alternative Charges:

- i) Buying or disposing of any person as a slave C/S 261 of the Penal Code
- ii) Habitual dealing in slaves C/S 262 of the Penal Code
- iii) Unlawful entry into Zambia C/S 11 and Section 56 of the Immigration and Deportation Act No. 18 of 2010
- iv) Kidnapping from Zambia C/S 251 and Section 254 of the Penal Code
- v) Intent to deceive C/S 344(a) of the Penal Code (Note: No penalty included)

**Note: Subsections 2 - 10 below are additional offences to Section 3(1), they are not standalone offences. They must be read together with 3(i).**

### 4.2.4 Prescribed Penalties

- i) 20 – 30 years

### 4.3 Trafficking in Person for Purposes of Sexual Exploitation

Refer to Section 3 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022). Note: Section 3 (2) is a penal provision for 3(l) due to it being an aggravating issue, and NOT an offence. The offence is committed when a person engages in trafficking in persons for purposes of sexual exploitation.

#### 4.3.1 Ingredients of the Offence:

- i) Any form of sexual exploitation
- ii) Forced sex
- iii) Abuse of power by a third person by recruitment and control to provide sexual services

#### 4.3.2 Possible Defences:

- i) Consensual relationship
- ii) Ignorance that trafficking was taking place
- iii) Alibi
- iv) Non-identification of the offender

#### 4.3.3 Alternative Charges:

- i) Fraudulent penance of marriage C/S 165 of the Penal Code
- ii) Unlawful compulsory labour C/S 263 of the Penal Code
- iii) Marriage ceremony fraudulently gone through without lawful marriage C/S 167 of the Penal Code
- iv) Indecent assault on a female C/S 137(1) of the Penal Code
- v) Incest C/S 159 of the Penal Code (all possible offences under chapter 15 of the Penal Code) and (Part 9 of the Cyber Security and Cyber-Crime Act)
- vi) Unnatural offences C/S 155 of the Penal Code
- vii) Rape C/S 133 of the Penal Code

#### 4.3.4 Prescribed Penalties

- i) 25 years - life

## 4.4 Trafficking in Persons Through Abduction

**Refer to Section 3 (3) of the Anti-Human Trafficking Act No. 16 of 2022).** The offence is committed when a person abducts a victim of trafficking in persons.

### 4.4.1 Ingredients of the Offence:

- i) Actual abduction
- ii) Coercion
- iii) Deceit

### 4.4.2 Possible Defences:

- i) Offender did not compel or induce a person to move
- ii) Identity of the offender is unknown
- iii) Alibi

### 4.4.3 Alternative Charges:

- i) Abduction C/S 253 of the Penal Code
- ii) Kidnapping from lawful guardian C/S 252 of the Penal Code
- iii) Kidnapping or abducting in order to subject a person among others to grievous harm or slavery C/S 257 of the Penal Code (Cyber Security and Cyber Crimes Act Part 9)

### 4.4.4 Prescribed Penalties

- i) 25 – 35 years

## 4.5 Trafficking in Persons Resulting in Death of the Victim

**Refer to Section 3 (4) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages in trafficking in persons resulting in death of the victim.

### 4.5.1 Ingredients of the offence:

- i) Trafficking of a person
- ii) Death resulting directly or indirectly from a trafficking situation

### 4.5.2 Possible Defences:

- i) Absence of Intention to exploit
- ii) Absence of knowledge
- iii) Offender did not commit any acts related to the Act, Means and Purpose of trafficking
- iv) Non-identification of the offender
- v) The victim did not die whilst in the custody of the offender

### 4.5.3 Alternative Charges:

- i) Murder C/S 200 of the Penal Code
- ii) Manslaughter C/S 199 of the Penal Code

### 4.5.4 Prescribed Penalties

- i) 35 years - life

## 4.6 Trafficking in Person resulting in Grievous Bodily Harm

**Refer to Section 3 (4) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages in trafficking in persons resulting in grievous harm of a victim.

### 4.6.1 Ingredients of the offence:

- i) Trafficking of person
- ii) Grievous bodily harm resulting directly or indirectly from a trafficking situation

### 4.6.2 Possible Defences:

- i) Lack of medical evidence
- ii) Expert opinion of a medical practitioner

### 4.6.3 Alternative Charges:

- i) Grievous bodily harm C/S 229 of the Penal Code
- ii) Assault C/S 248 of the Penal Code
- iii) unlawful wounding C/S 232 of the Penal Code (all possible offences under Chapter 24 of the Penal Code)

### 4.6.4 Prescribed Penalties

- i) 35 years - life

## 4.7 Public Officer Facilitating Trafficking in Persons

**Refer to Section 3 (5) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a public officer facilitates trafficking in persons.

### 4.7.1 Ingredients of the Offence:

- i) Offender must be a public officer
- ii) Engaging in trafficking activities
- iii) Use of their office position to obtain an advantage

### 4.7.2 Possible Defences:

- i) Offender is not a public officer
- ii) Offender did not use his office for trafficking in persons

### 4.7.3 Alternative Charges:

- i) Abuse of authority of office C/S 21 of the Anti-Corruption Act
- ii) Impersonating a public officer C/S102 of the Penal Code
- iii) Threat of injury to a person employed in public office C/S 103 of the Penal Code
- iv) Money laundering C/S 23(1) of the Financial Intelligence Act No 46 of 2010
- v) Aiding and abetting illegal immigrants C/S46(1)(a) and (b) of the Immigration and Deportation Act No. 18 of 2010

### 4.7.4 Prescribed Penalties

- i) 25 - 35 years

## **4.8 Public Officer Using his Office for Furtherance of Trafficking in Person or Smuggling of Migrants**

**Refer to Section 3 (5) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a public officer uses his office in furtherance of an offence under the Act.

### **4.8.1 Ingredients of the Offence:**

- i) Offender must be a public officer
- ii) Engaging in trafficking activities
- iii) Use of their office position to obtain an advantage

### **4.8.2 Possible Defences:**

- i) Offender is not a public officer
- ii) Offender did not use his office for trafficking in persons or smuggling of migrants

### **4.8.3 Alternative Charges:**

- i) Abuse of authority of office C/S 21 of the Anti-Corruption Act No. 3 of 2012.
- ii) Impersonating a public officer C/S 102 of the Penal Code.
- iii) Threat of injury to a person employed in public office C/S 103 of the Penal Code.
- iv) Money laundering C/S 23(1) of the Financial Intelligence Act No 46 of 2010.
- v) Aiding and abetting illegal immigrants C/S 46(1)(a) and (b) of the Immigration and Deportation Act No. 18 of 2010.

### **4.8.4 Prescribed Penalties**

- i) 25 - 35 years

## 4.9 Person in Management of an Institution Engaging in Trafficking in Persons

**Refer to Section 3 (6) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022).** The offence is committed when a person in management of an institution engages in trafficking in persons.

### 4.9.1 Ingredients of the Offence:

- i) Establishing that the institution was concerned in trafficking in persons.
- ii) The institution engages in trafficking in persons.

### 4.9.2 Possible Defences:

- i) Offender is not concerned in the management of an institution.
- ii) The Institution did not engage in trafficking in persons.

### 4.9.3 Alternative Charges:

- i) Abuse of authority of office.
- ii) Money laundering C/S 23(1) of the Financial Intelligence Act No. 46 of 2010.
- iii) Being in possession of property believed to be proceeds of crime C/S 71 of the Proceeds of Crime Act No. 19 of 2010.

### 4.9.4 Prescribed Penalties

- i) 25 - 35 years

#### 4.10 Organized Criminal Group Engaging in Trafficking in Persons

**Refer to Section 3 (6) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when an organized criminal group engages in trafficking in persons.

##### 4.10.1 Ingredients of the Offence:

- i) The offender is a member of an organised criminal group
- ii) The criminal group engaged in trafficking in persons

##### 4.10.2 Possible Defences:

- i) Offender is not a member of a criminal organized group
- ii) Criminal group did not engage in trafficking in persons

##### 4.10.3 Alternative Charges:

- i) Money laundering C/S 23(1) of the Financial Intelligence Act No. 46 of 2010
- ii) Being in possession of property believed to be proceeds of crime C/S 71 of the Proceeds of Crime Act No. 19 of 2010

##### 4.10.4 Prescribed Penalties

- i) 25 - 35 years

## 4.11 Trafficking in Persons for Purposes of Removal of a Victim's Body Parts

**Refer to Section 3 (8) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages in trafficking in persons for purposes of removal of a victim's body parts.

### 4.11.1 Ingredients of the Offence:

- i) Proof of removal of body parts
- ii) Proof of intended removal of body parts

### 4.11.2 Possible Defences:

- i) No intention to remove body parts
- ii) Alibi

### 4.11.3 Alternative Charges:

- i) Grievous bodily harm C/S 229 of the Penal Code
- ii) Assault C/S 248 of the Penal Code
- iii) Unlawful wounding C/S 232 of the Penal Code
- iv) Attempted murder C/S 215 of the Penal Code

### 4.11.4 Prescribed Penalties

- i) 25 years - life

## 4.12 Engaging in Child Trafficking

**Refer to Section 3A (1) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages in child trafficking.

### 4.12.1 Ingredients of the Offence:

- i) The victim must be a child
- ii) Proof of child trafficking
- iii) Offender should have committed the acts relating to child trafficking
- iv) Any one or more of these Acts: recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia; and
- v) The purpose i.e. exploitation of the victim of trafficking

**(NOTE: Proving that means relating to trafficking in persons were employed, is not necessary)**

### 4.12.2 Possible Defences:

- i) Reasonable belief that the victim is not a child
- ii) Claim in good faith to possession of child
- iii) Legal guardianship
- iv) Alibi
- v) Absence of intention
- vi) Offender did not commit any acts related to the Act, and Purpose of trafficking in persons
- vii) Absence of Knowledge

### 4.12.3 Alternative Charges:

- i) Assault on a child C/S 248 of the Penal Code
- ii) Defilement C/S 138 of the Penal Code

- iii) Employment of children and young person's C/S 80 of the Employment Code Act No. 3 of 2019 (exception)
- iv) Child stealing C/S 171(1) of the Penal Code
- v) Kidnapping or abducting child under fourteen with intent to steal from its person C/S 259 Penal Code
- vi) Abduction of a Child C/S 136 of the Penal Code
- vii) Wilfully neglecting to provide care, protection and maintenance of the child or proper contribution towards reasonable maintenance of, or care for, the child C/S 175(1)(a) of Children's Code Act No.12 of 2022
- iv) Giving or receiving, or agreeing to give or receive, any consideration, in cash or in kind, or gift for the adoption of a child C/S 204(1)(b) of the Children's Code Act No.12 of 2022
- v) Causing a person to give up a child for adoption through fraud, coercion, undue influence or duress C/S 204 (1) (c) Children's Code Act No.12 of 2022
- vi) Publishing or causing to be published in any form or by any means an advertisement dealing with the placement or adoption of a child C/S 204(1)(e) Children's Code Act No.12 2022

#### 4.12.4 Prescribed Penalties

- i) 35 years - life

#### 4.13 Child Trafficking – Recruiting, Transporting, Transferring, Harbours or Receiving a Child for the Purpose of Exploitation

**Refer to Section 3A (2) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person recruits, transports, transfers, harbours or receives a child for the purpose of exploitation.

##### 4.13.1 Ingredients of the Offences:

- i) The victim must be a child
- ii) Proof of child trafficking based on the following:
- iii) Offender should have committed the acts relating to child trafficking
- iv) Any one or more of these acts: recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia; and
- v) The purpose i.e. exploitation of the victim of trafficking. **NOTE: Proving that means relating to trafficking in persons were employed, is not necessary.**

##### 4.13.2 Possible Defences:

- i) Reasonable belief that the victim is not a child
- ii) Claim in good faith to possession of child
- iii) Legal guardianship
- iv) Alibi
- v) Absence of intention
- vi) Offender did not commit any acts related to the Act, and Purpose of trafficking in persons
- vii) Absence of Knowledge

##### 4.13.3 Alternative Charges:

- i) Assault on a child C/S 248 of the Penal Code
- ii) Defilement C/S 138 of the Penal Code

- iii) Employment of children and young person's C/S 80 of the Employment Code Act No. 3 of 2019 (exception)
- iv) Child stealing C/S 171(1) of the Penal Code
- v) Kidnapping or abducting child under fourteen with intent to steal from its person C/S 259 Penal Code
- vi) Abduction of a Child C/S 136 of the Penal Code
- vii) Wilfully neglecting to provide care, protection and maintenance of the child or proper contribution towards reasonable maintenance of, or care for, the child C/S 175(1)(a) of Children's Code Act No.12 of 2022
- viii) Giving or receiving, or agreeing to give or receive, any consideration, in cash or in kind, or gift for the adoption of a child C/S 204(1)(b) of the Children's Code Act No.12 of 2022
- ix) Causing a person to give up a child for adoption through fraud, coercion, undue influence or duress C/S 204 (1) (c) Children's Code Act No.12 of 2022
- x) Publishing or causing to be published in any form or by any means an advertisement dealing with the placement or adoption of a child C/S 204(1)(e) Children's Code Act No.12 2022

#### 4.13.4 Prescribed Penalties

- i) 35 years - life

#### 4.14 Child Trafficking by Guardian or Parent or Person with Parental Responsibility for the said Child

**Refer to Section 3A (3) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a parent or guardian or a person having parental responsibility for a child traffics the said child.

##### 4.14.1 Ingredients of the Offences:

- i) Parent or guardian or a person having parental responsibility for a child engages in activities of trafficking of his or her child. **NOTE: Proving that means relating to trafficking in persons were employed, is not necessary**

##### 4.14.2 Possible Defences:

- i) Offender is not a parent or guardian
- ii) Victim is not a child
- iii) Absence of intention
- iv) Parent or guardian did not permit
- v) Unknown identity of the offender

##### 4.14.3 Alternative Charges:

- i) Aiding or abetting and providing accommodation C/S 45 (2) of the Immigrations and Deportation Act
- ii) Child neglect C/S 175 of the Children's Code Act No.12 of 2022
- iii) Cruelty and child labour C/S 175 of the children's code Act No.12 of 2022
- iv) Wrongful retention of a Child in the Republic C/S 283 (1) of the Children Code Act No.12 of 2022
- v) Householder permitting defilement of girl under twelve on his premise's C/S 142 of the Penal Code

- vi) Householder permitting defilement of girl under sixteen on his premise's C/S 143 of the Penal Code
- vii) Marrying or removing a learner from school C/S 18 (1) of the Education Act No.23 of 2011
- viii) Failure to exercise parental responsibility C/S 44 of the Children's Code Act No.12 of 2022
- ix) Harboursing or concealing child C/S 288 of the Children's Code Act No.12 of 2022

#### 4.14.4 Prescribed Penalties

- i) 35 years - life

#### **4.15 Parent or Guardian or a Person with Parental Responsibility for a Child Permitting Child Trafficking**

**Refer to Section 3A (3) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a parent or guardian or a person having parental responsibility for a child permits the trafficking of a child

##### **4.15.1 Ingredients of the Offences:**

- i) Parent or guardian or a person having parental responsibility for a child engages in activities of trafficking of his or her child. NOTE: Proving that means relating to trafficking in persons were employed, is not necessary

##### **4.15.2 Possible Defences:**

- i) Offender is not a parent or guardian or a person having parental responsibility for the child
- ii) Victim is not a child
- iii) Absence of intention
- iv) Parent or guardian or a person having parental responsibility for the child did not permit
- v) Unknown identity of the offender

##### **4.15.3 Alternative Charges:**

- i) Aiding or abetting and providing accommodation C/S 45 (2) of the Immigrations and Deportation Act
- ii) Child neglect C/S 175 of the Children's Code Act No.12 of 2022
- iii) Cruelty and child labour C/S 175 of the children's code Act No.12 of 2022
- iv) Employment of children and young person's C/S 80 of the Employment Code Act No. 3 of 2019 (exception)
- v) Wrongful retention of a Child in the Republic C/S 283 (1) of the Children Code Act No.12 of 2022
- vi) Householder permitting defilement of girl under twelve on his premise's C/S 142 of the Penal Code

- vii) Householder permitting defilement of girl under sixteen on his premise's C/S 143 of the Penal Code
- viii) Marrying or removing a learner from school C/S 18 (1) of the Education Act No.23 of 2011
- ix) Failure to exercise parental responsibility C/S 44 of the Children's Code Act No.12 of 2022
- x) Harboursing or concealing child C/S 288 of the Children's Code Act No.12 of 2022

#### 4.15.4 Prescribed Penalties

- i) 35 years - life

#### 4.16 Child Trafficking Resulting in the Death of the Child

**Refer to Section 3A (4) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages in child trafficking resulting in the death of the child.

##### 4.16.1 Ingredients of the Offences:

- i) Death of a child resulting directly or indirectly from a trafficking situation. NOTE: Proving that means relating to trafficking in persons were employed, is not necessary

##### 4.16.2 Possible Defences:

- i) Victim is not a child
- ii) Absence of the identity of the offender
- iii) Victim did not die in the custody of the offender

##### 4.16.3 Alternative Charges:

- i) Assault on a child C/S 248 of the Penal Code
- ii) All offences under chapter 24 of the Penal Code
- iii) All offences under Part 9 of the Cyber Security and Cyber-Crimes Act
- iv) All offences under Sections 199 and Section 212 of the Children's Code Act No. 12 of 2022

##### 4.16.4 Prescribed Penalties

- i) 35 years - life

#### 4.17 Child Trafficking Resulting in Grievous Bodily Harm of a Child

**Refer to Section 3A (4) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages in child trafficking resulting in grievous bodily harm of a child.

##### 4.17.1 Ingredients of the Offences:

- i) Grievous bodily harm of a child resulting directly or indirectly from a trafficking situation. NOTE: Proving that means relating to trafficking in persons were employed, is not necessary

##### 4.17.2 Possible Defences:

- i) Unknown identity of the offender
- ii) Lack of medical evidence
- iii) Expert opinion of a medical practitioner
- iv) Victim is not a child

##### 4.17.3 Alternative Charges:

- i) Assault or battering a child C/S 248(A) of the Penal Code
- ii) Assaulting, ill-treating, abandoning or exposing a child to any form of suffering or injury to mental or physical health C/S 175(1)(b) of Penal Code No.12 of 2022

##### 4.17.4 Prescribed Penalties

- i) 35 years - life

## 4.18 Debt bondage

**Refer to Section 4 (1) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages in conduct that causes another person to enter into debt bondage.

### 4.18.1 Ingredients of the Offences:

- i) Prove that the offender engaged in a conduct
- ii) The conduct caused another person to enter in a situation of debt bondage
- iii) The offender had intention to cause the other person to enter in a situation of debt bondage

### 4.18.2 Possible Defences:

- i) No knowledge that the act would cause debt bondage
- ii) No reasonable cause to believe that the act would cause the other person to enter into a situation of debt bondage
- iii) No intention to cause debt bondage

### 4.18.3 Alternative Charges:

- iii) Obtaining pecuniary advantage by false pretence
- iv) Extortion C/S 296 of the Penal Code
- v) Attempts at extortion by threat C/S 297 of the Penal Code

### 4.18.4 Prescribed Penalties

- i) 15 - 25 years

## 4.19 Prohibition of Destruction of Documents

**Refer to Section 5 of the Anti-Human Trafficking Act No. 11 of 2008 as amended by Act No. 16 of 2022.** The offence is committed when a person Intentionally destroys a victim's identity document, passport or other travel documents in furtherance of trafficking in persons.

### 4.19.1 Ingredients of the Offences:

- i) Intentionally destroying an actual or purported identification document e.g. passport, or other travel document
- ii) Offender has an intent to destroy an actual or purported identification document e.g. passport, or other travel document
- iii) Offender had no lawful justification for the action

### 4.19.2 Possible Defences:

- i) The offender destroyed the documents by accident
- ii) Concealed or confiscated or possessed the document for safe keeping

### 4.19.3 Alternative Charges:

- i) Destroying evidence C/S 111 of the Penal Code
- ii) Use of another person's passport or travel document C/S 23(3) of the Passport Act No. 28 of 2016
- iii) Forgery, alteration, destroying, another person's passport or travel document belonging to another, present the passport other than his own C/S 23(2) of the Passports Act No. 28 of 2016
- iv) Is knowingly in possession of a national registration card on which any unlawful entry, alteration or erasure has been made or of a document so closely resembling a national registration card as to be calculated to deceive C/S 13(1)(j) of the National Registration Act Cap 126

### 4.19.4 Prescribed Penalties

- i) 15 - 25 years

## 4.20 Prohibition of Possession of Documents

**Refer to Section 5 of the Anti-Human Trafficking Act No. 11 of 2008 as amended by Act No. 16 of 2022.** The offence is committed when a person Intentionally possesses a victim's identity document, passport or other travel documents in furtherance of trafficking in persons.

### 4.20.1 Ingredients of the Offences:

- i) Intentionally possessing an actual or purported identification document e.g. passport, or other travel document.
- ii) Offender has an intent to possess an actual or purported identification document e.g. passport, or other travel document.
- iii) Offender had no lawful justification for the action.

### 4.20.2 Possible Defences:

- i) The offender possessed the documents by accident
- ii) Possessed the document for safe keeping

### 4.20.3 Alternative Charges:

- i) Use of another person's passport or travel document C/S 23(3) of the Passport Act No. 28 of 2016
- ii) Presenting another person's passport or travel document other than his/her own C/S 23(2) of the Passports Act No. 28 of 2016
- iii) Is knowingly in possession of a national registration card on which any unlawful entry, alteration or erasure has been made or of a document so closely resembling a national registration card as to be calculated to deceive C/S 13(1)(j) of the National Registration Act Cap 126

### 4.20.4 Prescribed Penalties

- i) 15 - 25 years

## 4.21 Prohibition Tampering with Documents

**Refer to Section 5 of the Anti-Human Trafficking Act No. 11 of 2008 as amended by Act No. 16 of 2022.** The offence is committed when a person intentionally tampers with a victim's identity document, passport or other travel documents in furtherance of trafficking in persons.

### 4.21.1 Ingredients of the Offences:

- i) Intentionally tampering with an actual or purported identification document e.g. passport, or other travel document
- ii) Offender has an intent to tamper with an actual or purported identification document e.g. passport, or other travel document
- iii) Offender had no lawful justification for the action

### 4.21.2 Possible Defences:

- i) The offender tampered with the documents by accident

### 4.21.3 Alternative Charges:

- i) Destroying evidence C/S 111 of the Penal Code.
- ii) Use of another person's passport or travel document C/S 23(3) of the Passport Act No. 28 of 2016.
- iii) Forgery, alteration, destroying, another person's passport or travel document belonging to another person C/S 23(2) of the Passports Act No. 28 of 2016.
- iv) Is knowingly in possession of a national registration card on which any unlawful alteration or erasure has been made or of a document so closely resembling a national registration card as to be calculated to deceive C/S 13(1)(j) of the National Registration Act Cap 126.

### 4.21.4 Prescribed Penalties

- i) 15 - 25 years

## 4.22 Prohibition of Concealment of Documents

### **Section 5 of the Anti-Human Trafficking Act No. 11 of 2008 as amended by Act No. 16 of**

**2022.** The offence is committed when a person intentionally conceals a victim's identity document, passport or other travel documents in furtherance of trafficking in persons.

#### 4.22.1 Ingredients of the Offences:

- i) Intentionally concealing an actual or purported identification document e.g. passport, or other travel document
- ii) Offender has an intent to conceal an actual or purported identification document e.g. passport, or other travel document
- iii) Offender had no lawful justification for the action

#### 4.22.2 Possible Defences:

- i) The offender conceals the documents by accident
- ii) Concealed the document for safe keeping

#### 4.22.3 Alternative Charges:

- i) Is knowingly in possession of a national registration card on which any unlawful entry, alteration or erasure has been made or of a document so closely resembling a national registration card as to be calculated to deceive C/S 13(1)(j) of the National Registration Act Cap 126.

#### 4.22.4 Prescribed Penalties

- i) 15 - 25 years

## 4.23 Intentionally Benefiting Financially or Otherwise from the Services of Victim

**Refer to Section 6 (1) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person intentionally benefits financially or otherwise, from the services of a victim of trafficking in persons.

### 4.23.1 Ingredients of the Offences:

- i) Offender benefited financially or otherwise from the services of a victim of trafficking; or
- ii) Offender used or enabled another person to use the services of a victim of trafficking
- iii) Offender had intention to benefit financially or otherwise from the services of a victim of trafficking
- iv) Offender had knowledge that the finances belonged to the victim of trafficking

### 4.23.2 Possible Defences:

- i) No knowledge that the person was a victim
- ii) No knowledge that services acquired were of a victim of trafficking

### 4.23.3 Alternative Charges:

- i) Woman living on or aiding the gainful prostitution of another woman C/S 147 of the Penal Code

### 4.23.4 Prescribed Penalties

- i) 10 - 25 years

## 4.24 Intentionally Using Services of Victim

**Refer to Section 6 (1) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person intentionally uses the services of a victim of trafficking in persons.

### 4.24.1 Ingredients of the Offences:

- i) Offender benefited financially or otherwise from the services of a victim of trafficking; or
- ii) Offender used the services of a victim of trafficking
- iii) Offender had intention to benefit financially or otherwise from the services of a victim of trafficking
- iv) Offender had knowledge that the finances belonged to the victim of trafficking

### 4.24.2 Possible Defences:

- i) No knowledge that the person was a victim
- ii) No knowledge that services acquired were of a victim of trafficking

### 4.24.3 Alternative Charges:

- i) Woman living on or aiding the gainful prostitution of another woman C/S 147 of the Penal Code

### 4.24.4 Prescribed Penalties

- i) 10 - 25 years

## 4.25 Intentionally Enabling Another Person's Usage of Services of Victim

**Section 6 (1) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person intentionally enables another person's usage of the services of a victim of trafficking in persons.

### 4.25.1 Ingredients of the Offences:

- i) Offender benefited financially or otherwise from the services of a victim of trafficking; or
- ii) Offender enabled another person to use the services of a victim of trafficking
- iii) Offender had intention to benefit financially or otherwise from the services of a victim of trafficking
- iv) Offender had knowledge that the finances belonged to the victim of trafficking

### 4.25.2 Possible Defences:

- i) No knowledge that the person was a victim
- ii) No knowledge that services acquired were of a victim of trafficking

### 4.25.3 Alternative Charges:

- i) Woman living on or aiding the gainful prostitution of another woman C/S 147 of the Penal Code

### 4.25.4 Prescribed Penalties

- i) 10 - 25 years

## 4.26 Using Services of Victim for the Purpose of Sexual Exploitation

**Refer to Section 6 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person uses the services of a victim for the purpose of sexual exploitation.

### 4.26.1 Ingredients of the Offences:

- i) Offender benefited financially or otherwise from services of a victim of trafficking; or
- ii) Offender used the services of a victim of trafficking
- iii) Offender had intention to benefit financially or otherwise from the services of a victim of trafficking
- iv) Offender had knowledge that the finances belonged to the victim of trafficking

### 4.26.2 Possible Defences:

- i) No knowledge that the person was a victim
- ii) No knowledge that services acquired were of a victim of trafficking

### 4.26.3 Alternative Charges:

- i) Woman living on or aiding the gainful prostitution of another woman C/S 147 of the Penal Code
- ii) Rape C/S 132 of the Penal Code
- iii) Defilement C/S 138 of the Penal Code
- iv) Indecent assault C/S 137 of the Penal Code
- v) Benefiting from the earnings of a prostitute C/S 147 of the Penal Code
- vi) Unlawful compulsory labour C/S 263 of the Penal Code
- vii) Habitual dealing in slave's C/S 262 of the Penal Code
- viii) Buying and disposing of any person as a slave C/S 261 of the Penal Code

### 4.26.4 Prescribed Penalties

- i) 15 - 25 years

## 4.27 Procuring the Services of a Victim for the Purpose of Sexual Exploitation

**Refer to Section 6 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person procures the services of a victim for the purpose of sexual exploitation.

### 4.27.1 Ingredients of the Offences:

- i) Offender benefited financially or otherwise from services of a victim of trafficking; or
- ii) Offender procured the services of a victim of trafficking
- iii) Offender used the services of a victim of trafficking
- iv) Offender had intention to benefit financially or otherwise from the services of a victim of trafficking
- v) Offender had knowledge that the finances belonged to the victim of trafficking

### 4.27.2 Possible Defences:

- i) No knowledge that the person was a victim
- ii) No knowledge that services acquired were of a victim of trafficking

### 4.27.3 Alternative Charges:

- i) Woman living on or aiding gainful prostitution of another woman C/S 147 of the Penal Code
- ii) Rape C/S 132 of the Penal Code
- iii) Defilement C/S 138 of the Penal Code
- iv) Indecent assault C/S 137 of the Penal Code
- v) Benefiting from the earnings of a prostitute C/S 147 of the Penal Code
- vi) Unlawful compulsory labour C/S 263 of the Penal Code
- vii) Habitual dealing in slave's C/S 262 of the Penal Code
- viii) Buying and disposing of any person as a slave C/S 261 of the Penal Code

### 4.27.4 Prescribed Penalties:

- i) 15 - 25 years

## 4.28 Using Services of a Victim for the Worst Forms of Child Labour

**Refer to Section 6 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person uses the services of a victim for the worst forms of child labour.

### 4.28.1 Ingredients of the Offences:

- i) Offender benefited financially or otherwise from services of a victim of trafficking; or
- ii) Offender used the services of a victim of trafficking
- iii) Offender had intention to benefit financially or otherwise from the services of a victim of trafficking
- iv) Offender had knowledge that the finances belonged to the victim of trafficking

### 4.28.2 Possible Defences:

- i) No knowledge that the person was a victim
- ii) No knowledge that services acquired were of a victim of trafficking

### 4.28.3 Alternative Charges:

- i) Cruelty and child labour C/S 175 of the children's code Act No.12 of 2022
- ii) Employment of children and young person's C/S 80 of the Employment Code Act No. 3 of 2019 (exception)
- iii) Rape C/S 132 of the Penal Code
- iv) Defilement C/S 138 of the Penal Code
- v) Indecent assault C/S 137 of the Penal Code
- vi) Benefiting from the earnings of a prostitute C/S 147 of the Penal Code
- vii) Unlawful compulsory labour C/S 263 of the Penal Code
- viii) Habitual dealing in slave's C/S 262 of the Penal Code
- ix) Buying and disposing of any person as a slave C/S 261 of the Penal Code

### 4.28.4 Prescribed Penalties:

- x) 15 - 25 years

## 4.29 Procuring the Services of a Victim for the Worst Forms of Child Labour

**Section 6 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person procures the services of a victim for the worst forms of child labour.

### 4.29.1 Ingredients of the Offences:

- i) Offender benefited financially or otherwise from services of a victim of trafficking; or
- ii) Offender procured the services of a victim of trafficking
- iii) Offender used the services of a victim of trafficking
- iv) Offender had intention to benefit financially or otherwise from the services of a victim of trafficking
- v) Offender had knowledge that the finances belonged to the victim of trafficking

### 4.29.2 Possible Defences:

- i) No knowledge that the person was a victim
- ii) No knowledge that services acquired were of a victim of trafficking

### 4.29.3 Alternative Charges:

- i) Cruelty and child labour C/S 175 of the children's code Act No.12 of 2022
- ii) Employment of children and young person's C/S 80 of the Employment Code Act No. 3 of 2019 (exception)
- iii) Rape C/S 132 of the Penal Code
- iv) Defilement C/S 138 of the Penal Code
- v) Indecent assault C/S 137 of the Penal Code
- vi) Benefiting from the earnings of a prostitute C/S 147 of the Penal Code
- vii) Unlawful compulsory labour C/S 263 of the Penal Code
- viii) Habitual dealing in slave's C/S 262 of the Penal Code
- ix) Buying and disposing of any person as a slave C/S 261 of the Penal Code

### 4.29.4 Prescribed Penalties:

- i) 15 - 25 years

#### 4.30 Conduct Facilitating Trafficking in Persons - Transporting a Victim of Trafficking

**Refer to Section 7 (1) (a) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person knowingly transports a victim of trafficking.

##### 4.30.1 Ingredients of the Offences:

- i) Offender transports the victim; there must be an act of transportation
- ii) Offender must have knowledge that what they are doing constitutes an offence

##### 4.30.2 Possible Defences:

- i) Offender did not know the person transported was a victim

##### 4.30.3 Alternative Charges:

- i) Buying or disposing of any person as a slave C/S 261 of the Penal Code

##### 4.30.4 Prescribed Penalties

- i) Conviction is to the same penalty as if the person had been convicted of the offence i.e. the person will be sentenced to a term as provided for under the offence. For example, if the person trafficked is a child, the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1).

#### **4.31 Conduct Facilitating Trafficking in Persons - Being in Charge of Conveyancing of Trafficking in Persons**

**Section 7 (1) (a) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person is in charge of conveyancing of trafficking in persons.

##### **4.31.1 Ingredients of the Offences:**

- i) Offender is in charge of conveyancing; there must be an act of conveyance
- ii) Offender must have knowledge that what they are doing constitutes an offence

##### **4.31.2 Possible Defences:**

- i) Offender did not know the person transported was a victim

##### **4.31.3 Alternative Charges:**

- i) Buying or disposing of any person as a slave C/S 261 of the Penal Code

##### **4.31.4 Prescribed Penalties**

- i) Conviction is to the same penalty as if the person had been convicted of the offence i.e. the person will be sentenced to a term as provided for under the offence. For example, if the person trafficked is a child, the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1)

#### **4.32 Conduct Facilitating Trafficking in Persons - Leasing Any Room, House or Building or Premises to be Used for Harboursing a Victim of Trafficking in Persons**

**Section 7 (1) (b) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person leases any room, house or building or premises to be used for harboursing a victim of trafficking in persons.

##### **4.32.1 Ingredients of the Offences:**

- i) Offender leases out his or her property for the purpose of harboursing victims
- ii) Offender has the intention to lease out his or her property for the purpose of harboursing victims
- iii) Offender must have knowledge that the people he or she has leased out his or her property are perpetrators of trafficking

##### **4.32.2 Possible Defences:**

- i) Offender had no knowledge that the property leased was to be used for the purpose of harboursing a victim
- ii) Offender had no reasonable cause to believe that the house or room or premises or property leased was being used for the purpose of facilitating the commission of an offence under this Act

##### **4.32.3 Alternative Charges:**

- i) House holder permitting defilement of a girl under 12 on his premise's C/S 142 of the Penal Code
- ii) Brothels C/S 149 of the Penal Code
- iii) Detention with intent or in brothel C/S 144 of Penal Code
- iv) Letting or selling or in any manner making available any immovable property in Zambia to that foreigner C/S 46(1)(b)(ix) Immigration and Deportation Act No.18 of 2010 No.18 of 2010.

#### 4.32.4 Prescribed Penalties

- i) Conviction is to the same penalty as if the person had been convicted of the offence i.e. the person will be sentenced to a term as provided for under the offence. For example, if the person trafficked is a child, the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1)

#### **4.33 Conduct Facilitating Trafficking in Persons - Sub-leasing Any Room, House or Building or Premises to be Used for Harboursing a Victim of Trafficking in Persons**

**Refer to Section 7 (1) (b) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person sub-leases any room, house or building or premises to be used for harboursing a victim of trafficking in persons.

##### **4.33.1 Ingredients of the Offences:**

- i) Offender sub-leases out his or her property for the purpose of harboursing victims.
- ii) Offender has the intention to sub-lease out his or her property for the purpose of harboursing victims.
- iii) Offender must have knowledge that the people he or she has sub-leased out his or her property are perpetrators of trafficking.

##### **4.33.2 Possible Defences:**

- i) Offender had no knowledge that the property sub-leased was to be used for the purpose of harboursing a victim.
- ii) Offender had no reasonable cause to believe that the house or room or premises or property sub-leased was being used for the purpose of facilitating the commission of an offence under this Act.

##### **4.33.3 Alternative Charges:**

- i) House holder permitting defilement of a girl under 12 on his premise's C/S 142 of the Penal Code
- ii) Brothels C/S 149 of the Penal Code.
- iii) Detention with intent or in brothel C/S 144 of Penal Code.
- iv) Letting or selling or in any manner making available any immovable property in Zambia to that foreigner C/S 46(1)(b)(ix) Immigration and Deportation Act No.18 of 2010 No.18 of 2010.

##### **4.33.4 Prescribed Penalties**

- i) Conviction is to the same penalty as if the person had been convicted of the offence i.e. the person will be sentenced to a term as provided for under the offence. For example, if the person trafficked is a child, the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1)

#### **4.34 Conduct Facilitating Trafficking in Persons – Advertising, Publishing, Printing, Broadcasting, or Distributing Information Facilitating Trafficking in Persons**

**Refer to Section 7 (1) (c) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person advertises or publishes or prints or broadcasts or distributes information facilitating trafficking in persons.

##### **4.34.1 Ingredients of the Offences:**

- i) Offender must have advertised or published or printed or broadcast or distributed information facilitating trafficking in persons; or caused the advertising or publishing or printing or broadcasting or distributing information facilitating trafficking in persons.
- ii) The publication or causing of publication must suggest or allude to trafficking.
- iii) The offender must have the knowledge that as a result of the advertising or publishing or printing or broadcasting or distributing information, his action was facilitating the trafficking in persons; or causing of advertising or publishing or printing or broadcasting or distributing information, his action was facilitating the trafficking in persons.

##### **4.34.2 Possible Defences:**

- i) Offender had no knowledge that the advertisement or publication or printing or broadcasting or distribution of information alluded to or suggested trafficking in persons.
- ii) Offender had no reasonable cause to believe that the advertisement or publication or printing or broadcasting or distribution of information alluded to or suggested trafficking in persons.

##### **4.34.3 Prescribed Penalties**

- i) Conviction is to the same penalty as if the person had been convicted of the offence i.e. the person will be sentenced to a term as provided for under the offence. For example, if the person trafficked is a child, the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1)

#### **4.35 Conduct Facilitating Trafficking in Persons - Causing the Advertising or Publishing or Printing or Broadcasting or Distribution of Information Facilitating Trafficking in Persons**

**Refer to Section 7 (1) (c) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person causes the advertising or publishing or printing or broadcasting or distribution of information facilitating trafficking in persons

##### **4.35.1 Ingredients of the Offences:**

- i) Offender must have advertised or published or printed or broadcast or distributed information facilitating trafficking in persons; or caused the advertising or publishing or printing or broadcasting or distributing information facilitating trafficking in persons
- ii) The publication or causing of publication must suggest or allude to trafficking
- iii) The offender must have the knowledge that as a result of the advertising or publishing or printing or broadcasting or distributing information, his action was facilitating the trafficking in persons; or causing of advertising or publishing or printing or broadcasting or distributing information, his action was facilitating the trafficking in persons.

##### **4.35.2 Possible Defences:**

- i) Offender had no knowledge that the advertisement or publication or printing or broadcasting or distribution of information alluded to or suggested trafficking in persons
- ii) Offender had no reasonable cause to believe that the advertisement or publication or printing or broadcasting or distribution of information alluded to or suggested trafficking in persons.

##### **4.35.3 Prescribed Penalties**

- i) Conviction is to the same penalty as if the person had been convicted of the offence i.e. the person will be sentenced to a term as provided for under the offence. For example, if the person trafficked is a child, the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1)

#### **4.36 Failure by Internet Service Provider Operating in Zambia to Report a Site on its Server that Advertises or Causes the Advertising of Information Facilitating Trafficking in Persons**

**Refer to Section 8 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when an internet service provider operating in Zambia fails to report a site on its server that advertises or causes the advertising of information facilitating trafficking in persons.

##### **4.36.1 Ingredients of the Offences:**

- i) Prove that the offender is an internet provider operating in Zambia.
- ii) Offender became aware that there is a person broadcasting, publishing, printing or advertising what would facilitate the trafficking in persons.
- iii) Offender failed to report to an authorised officer.
- iv) Offender had no lawful justification.

##### **4.36.2 Possible Defences:**

- i) Offender had no knowledge that the advertisement or publication or printing or broadcasting or distribution of information was for the furtherance of committing an offence.

##### **4.36.3 Alternative Charges:**

- i) Operating an electronic communication network without a license C/S 9 of the Information and Communication Technologies Act No. 15 of 2009.
- ii) Causing an electronic communication network to perform any function with intent to commit or facilitate the commission of an offence involving property, fraud, dishonest or which causes bodily harm C/S 77 of the Information and Communication Technologies Act No. 15 of 2009.

##### **4.36.4 Prescribed Penalties**

- i) Fine not exceeding 300,000 penalty units or 3 years; or both.

#### **4.37 Failure by Internet Service Provider Operating in Zambia to Report a Site on its Server that Publishes or Causes the Publishing of Information Facilitating Trafficking in Persons**

**Refer to Section 8 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when an internet service provider operating in Zambia fails to report a site on its server that publishes or causes the publishing of information facilitating trafficking in persons.

##### **4.37.1 Ingredients of the Offences:**

- i) Prove that the offender is an internet provider operating in Zambia
- ii) Offender became aware that there is a person broadcasting, publishing, printing or advertising what would facilitate the trafficking in persons
- iii) Offender failed to report to an authorised officer
- iv) Offender had no lawful justification

##### **4.37.2 Possible Defences:**

- i) Offender had no knowledge that the advertisement or publication or printing or broadcasting or distribution of information was for the furtherance of committing an offence

##### **4.37.3 Alternative Charges:**

- i) Operating an electronic communication network without a license C/S 9 of the Information and Communication Technologies Act No. 15 of 2009
- ii) Causing an electronic communication network to perform any function with intent to commit or facilitate the commission of an offence involving property, fraud, dishonest or which causes bodily harm C/S 77 of the Information and Communication Technologies Act No. 15 of 2009.

##### **4.37.4 Prescribed Penalties**

- i) Fine not exceeding 300,000 penalty units or 3 years; or both.

#### **4.38 Failure by Internet Service Providers Operating in Zambia Fails to Report a Site on its Server that Prints or Causes the Printing of Information Facilitating Trafficking in Persons**

**Refer to Section 8 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when an internet service provider operating in Zambia fails to report a site on its server that prints or causes the printing of information facilitating trafficking in persons.

##### **4.38.1 Ingredients of the Offences:**

- i) Prove that the offender is an internet provider operating in Zambia
- ii) Offender became aware that there is a person broadcasting, publishing, printing or advertising what would facilitate the trafficking in persons
- iii) Offender failed to report to an authorised officer
- iv) Offender had no lawful justification

##### **4.38.2 Possible Defences:**

- i) Offender had no knowledge that the advertisement or publication or printing or broadcasting or distribution of information was for the furtherance of committing an offence

##### **4.38.3 Alternative Charges:**

- i) Operating an electronic communication network without a license C/S 9 of the Information and Communication Technologies Act No. 15 of 2009
- ii) Causing an electronic communication network to perform any function with intent to commit or facilitate the commission of an offence involving property, fraud, dishonest or which causes bodily harm C/S 77 of the Information and Communication Technologies Act No. 15 of 2009

##### **4.38.4 Prescribed Penalties**

- i) Fine not exceeding 300,000 penalty units or 3 years; or both.

#### **4.39 Failure by Internet Service Provider Operating in Zambia to Report a Site on its Server that Broadcasts or Causes the Broadcasting of Information Facilitating Trafficking in Persons**

**Refer to Section 8 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when an internet service provider operating in Zambia fails to report a site on its server that broadcasts or causes the broadcasting of information facilitating trafficking in persons.

##### **4.39.1 Ingredients of the Offences:**

- i) Prove that the offender is an internet provider operating in Zambia
- ii) Offender became aware that there is a person broadcasting, publishing, printing or advertising what would facilitate the trafficking in persons
- iii) Offender failed to report to an authorised officer
- iv) Offender had no lawful justification

##### **4.39.2 Possible Defences:**

- i) Offender had no knowledge that the advertisement or publication or printing or broadcasting or distribution of information was for the furtherance of committing an offence

##### **4.39.3 Alternative Charges:**

- i) Operating an electronic communication network without a license C/S 9 of the Information and Communication Technologies Act No. 15 of 2009
- ii) Causing an electronic communication network to perform any function with intent to commit or facilitate the commission of an offence involving property, fraud, dishonest or which causes bodily harm C/S 77 of the Information and Communication Technologies Act No. 15 of 2009.

##### **4.39.4 Prescribed Penalties**

- i) Fine not exceeding 300,000 penalty units or 3 years; or both.

#### **4.40 Failure by Internet Service Provider Operating in Zambia to Report a Site on its Server that Distributes or Causes the Distribution of Information Facilitating Trafficking in Persons**

**Refer to Section 8 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when an internet service provider operating in Zambia fails to report a site on its server that distributes or causes the distribution of information facilitating trafficking in persons.

##### **4.40.1 Ingredients of the Offences:**

- i) Prove that the offender is an internet provider operating in Zambia
- ii) Offender became aware that there is a person broadcasting, publishing, printing or advertising what would facilitate the trafficking in persons
- iii) Offender failed to report to an authorised officer
- iv) Offender had no lawful justification

##### **4.40.2 Possible Defences:**

- i) Offender had no knowledge that the advertisement or publication or printing or broadcasting or distribution of information was for the furtherance of committing an offence

##### **4.40.3 Alternative Charges:**

- i) Operating an electronic communication network without a license C/S 9 of the Information and Communication Technologies Act No. 15 of 2009
- ii) Causing an electronic communication network to perform any function with intent to commit or facilitate the commission of an offence involving property, fraud, dishonest or which causes bodily harm C/S 77 of the Information and Communication Technologies Act No. 15 of 2009.

##### **4.40.4 Prescribed Penalties**

- i) Fine not exceeding 300,000 penalty units or 3 years; or both

#### 4.41 Engaging in Smuggling of Persons

**Refer to Section 9 (1) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person engages in smuggling of persons in or out of Zambia.

##### 4.41.1 Ingredients of the Offences:

- i) Offender facilitated the illegal entry of a person into or outside Zambia
- ii) That person is not a national or permanent resident of the country in which he was moved to
- iii) The purpose of moving such a person was for financial or material gain

##### 4.41.2 Possible Defences:

- i) Offender had no intent to benefit directly or indirectly
- ii) Offender had no knowledge the person used a falsified document to cross the border

##### 4.41.3 Alternative Charges:

- i) Aiding and abetting C/S 46 (1) of the Immigration and Deportation Act No.18 of 2010
- ii) Unlawful entry C/S 11 (2) of the Immigration and Deportation Act No.18 of 2010
- iii) Trafficking in persons C/S 40 (1) of the Immigration and Deportation Act No.18 of 2010

##### 4.41.4 Prescribed Penalties

- i) 15 – 20 years

## 4.42 Participating in Smuggling of Persons

**Refer to Section 9 (1) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person participates in smuggling of a person.

### 4.42.1 Ingredients of the Offences:

- i) Offender facilitated the illegal entry of a person into or outside Zambia
- ii) That person is not a national or permanent resident of the country in which he was moved to
- iii) The purpose of moving such a person was for financial or material gain

### 4.42.2 Possible Defences:

- i) Offender had no intent to benefit directly or indirectly
- ii) Offender had no knowledge the person used a falsified document to cross the border

### 4.42.3 Alternative Charges:

- i) Aiding and abetting C/S 46 (1) of the Immigration and Deportation Act No.18 of 2010
- ii) Unlawful entry C/S 11 (2) of the Immigration and Deportation Act No.18 of 2010
- iii) Trafficking in persons C/S 40 (1) of the Immigration and Deportation Act No.18 of 2010
- iv) Conveyancing person by water for hire in unsafe or overloaded vessel C/S 242 Penal Code

### 4.42.4 Prescribed Penalties:

- i) 15 – 20 years

#### 4.43 Smuggling of Persons Resulting in Death of the Person Being Smuggled

**Refer to Section 9 (2) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person engages in smuggling of a person resulting in death of the person being smuggled.

##### 4.43.1 Ingredients of the Offences:

- i) Offender facilitated the illegal entry of a person into or outside Zambia
- ii) That person is not a national or permanent resident of the country in which he was moved to
- iii) The purpose of moving such a person was for financial or material gain
- iv) The smuggling must directly or indirectly result in the death of the smuggled person

##### 4.43.2 Possible Defences:

- i) Absence of Intention to smuggle
- ii) Absence of Knowledge
- iii) Offender did not commit any acts related to smuggling
- iv) Non-identification of the offender
- v) The smuggled person did not die whilst in the custody of the offender

##### 4.43.3 Alternative Charges:

- i) Murder C/S 200 of the Penal Code)
- ii) Manslaughter C/S 199 of the Penal Code)

##### 4.43.4 Prescribed Penalties:

- i) Life

#### **4.44 Producing, Providing, Procuring or Possessing a Fraudulent Travel or Identity Document to Facilitate Smuggling of a Person**

**Refer to Section 9 (3) of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person produces or provides or procures or possesses a fraudulent travel or identity document to facilitate smuggling of a person.

##### **4.44.1 Ingredients of the Offences:**

- i) Offender produces or obtains or procures or possesses a fraudulent travel or identity document
- ii) With the intention to facilitate the smuggling of a migrant

##### **4.44.2 Possible Defences:**

- i) Offender was unaware that the documents were falsified

##### **4.44.3 Alternative Charges:**

- i) Forgery, making a false statement C/S 54 (4)(a) of the Immigration and Deportation Act No.18 of 2010

##### **4.44.4 Prescribed Penalties:**

- i) 10 – 15 years

#### 4.45 Harboursing, Concealing or Providing a Safe Haven to Offender Under this Act

**Refer to Section 10 of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022.** The offence is committed when a person harbours or conceals or provides a safe haven to any offender under this Act.

##### 4.45.1 Ingredients of the Offences:

- i) Prove harboursing or concealing or providing a safe haven to the offender of trafficking in persons or smuggling of migrants
- ii) Offender had knowledge that person had committed an offence either of trafficking in persons or smuggling of migrants

##### 4.45.2 Possible Defences:

- i) Offender was unaware that the person sheltered has committed an offence under the Act
- ii) Offender acted out of empathy in aiding

##### 4.45.3 Alternative Charges:

- i) Wrongfully concealing or keeping in confinement kidnapped or abducted person C/S 258 of the Penal Code
- ii) accessories after the fact C/S 397 of the Penal Code

##### 4.45.4 Prescribed Penalties:

- i) 2 – 5 years

#### **4.46 Aiding, Abetting, Counselling Procuring, Inciting or Soliciting the Commission of an Offence Under this Act**

**Refer to Section 11 of the Anti-Human Trafficking Act No. 11 of 2008 as Amended by Act No. 16 of 2022).** The offence is committed when a person aids, abets, counsels, procures, incites or solicits the commission of an offence under this Act.

##### **4.46.1 Ingredients of the Offences:**

- i) Aiding or abetting or counselling or procuring or inciting or soliciting someone to commit trafficking in persons or smuggling of migrants and the person aided or abetted or counselled or procured or incited or solicited committed the offence
- ii) Offender had no lawful justification to commit the acts

##### **4.46.2 Possible Defences:**

- i) Offender was unaware that their involvement contributed to the commission or the furtherance of the offence

##### **4.46.3 Alternative Charges:**

- i) Aiding and abetting illegal immigrant's c/s 46 (1) of the Immigration and Deportation Act
- ii) Wrongfully concealing or keeping kidnapped or abducted persons c/s 258 of the penal code

##### **4.46.4 Prescribed Penalties:**

- i) Conviction is to the same penalty as if the person had been convicted of the offence. The sentence will be in relation to the specific offence that the person aided and abetted.
  - a. For example, if the aiding was related to trafficking in persons the sentence will be according to the penalties provided in section 3.
  - b. If the person aided and abetted the offender in a case where a child was involved the sentence will be as provided in section 3A,
  - c. if it involves adults the sentence will be as provided in section 3(1)

#### 4.47 Attempting to Engage in Trafficking in Persons

**Refer to Section 12 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person attempts to engage in trafficking in persons.

##### 4.47.1 Ingredients of the Offences:

- i) Knowledge of the trafficking in persons situation.
- ii) The offender must attempt to act or omit to engage in conduct constituting an offence under this Act.
- iii) Wilful intent to exploit or gain material or financial benefit from a person
- iv) The attempted act or omission must be capable of facilitating or resulting in trafficking in persons
- v) The attempted act or omission must be intended to facilitate trafficking in persons

##### 4.47.2 Possible Defences:

- i) Acts established did not prove an attempt to traffic

##### 4.47.3 Alternative Charges:

- i) Wrongfully concealing or keeping in confinement kidnapped or abducted person C/S 258 of the Penal Code
- ii) Accessories after the fact C/S 397 of the Penal Code

##### 4.47.4 Prescribed Penalties:

- i) 10 – 20 years

#### 4.48 Attempts to Engage in Smuggling of Persons

**Refer to Section 12 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 9 of the Amendment Act No. 16 of 2022.** The offence is committed when a person attempts to engage in smuggling of persons.

##### 4.48.1 Ingredients of the Offences:

- i) Knowledge of the smuggling of migrants' situation
- ii) The offender must attempt to act or omit to engage in conduct constituting an offence under this Act.
- iii) Wilful intent to exploit or gain material or financial benefit from a person
- iv) The attempted act or omission must be capable of facilitating or resulting in smuggling of migrants
- v) The attempted act or omission must be intended to facilitate smuggling of migrants

##### 4.48.2 Possible Defences:

- i) Acts established did not prove an attempt to smuggle

##### 4.48.3 Alternative Charges:

- i) Wrongfully concealing or keeping in confinement kidnapped or abducted person C/S 258 of the Penal Code
- ii) Accessories after the fact C/S 397 of the Penal Code

#### **4.49 Attempting to Engage in Conduct Facilitating Trafficking in Persons**

**Refer to Section 12 of the Anti-Human Trafficking Act No. 11 of 2008 read together with Section 7 of the Amendment Act No. 16 of 2022.** The offence is committed when a person engages in conduct to facilitate trafficking in persons.

##### **4.49.1 Ingredients of the Offences:**

- i) Knowledge of the trafficking in persons situation.
- ii) The offender must attempt to act or omit to engage in conduct constituting an offence under this Act.
- iii) Wilful intent to exploit or gain material or financial benefit from a person
- iv) The attempted act or omission must be capable of facilitating or resulting in trafficking in persons
- v) The attempted act or omission must be intended to facilitate trafficking in persons

##### **4.49.2 Possible Defences:**

- i) Acts established did not prove an attempt to traffic

##### **4.49.3 Alternative Charges:**

- i) Wrongfully concealing or keeping in confinement kidnapped or abducted person C/S 258 of the Penal Code
- ii) Accessories after the fact C/S 397 of the Penal Code

##### **4.49.4 Prescribed Penalties**

- i) 10 – 20 years

#### 4.50 Institution Engaging in Trafficking in Persons

**Refer to Section 13 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when an institution engages in trafficking in persons.

##### 4.50.1 Ingredients of the Offences:

Note: These are additional elements to an offence committed by institutions for any of the offences under the Act:

- i) Consent of an officer of the institution
- ii) The officer of an institution must have connived with the offender
- iii) Negligence on the part of the officer of the institution

##### 4.50.2 Possible Defences:

- i) There was no consent or connivance or negligence from the officer of the institution
- ii) The offender is not an officer of the institution

##### 4.50.3 Alternative Charges:

- i) Offences by corporate or unincorporated body C/S 371 of the Companies Act No. 10 of 2017;  
or
- ii) Offences by corporate or unincorporated body c/s 52 of the financial intelligence centre Act No. 46 of 2010

##### 4.50.4 Prescribed Penalties:

- i) 20 – 30 years

#### 4.51 Institution Engaging in Conduct Facilitating Trafficking in Persons

Section 13 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 7 of the Amendment Act No. 16 of 2022. The offence is committed when an institution engages in conduct facilitating trafficking in persons.

##### 4.51.1 Ingredients of the Offences:

- i) Consent of an officer of the institution
- ii) The officer of an institution must have connived with the offender
- iii) Negligence on the part of the officer of the institution

**Note: These are additional elements to an offence committed by institutions for any of the offences under the Act:**

##### 4.51.2 Possible Defences:

- i) There was no consent or connivance or negligence from the officer of the institution
- ii) The offender is not an officer of the institution

##### 4.51.3 Alternative Charges:

- i) Offences by corporate or unincorporated body C/S 371 of the Companies Act No. 10 of 2017;  
or
- ii) Offences by corporate or unincorporated body c/s 52 of the financial intelligence centre Act No. 46 of 2010

##### 4.51.4 Prescribed Penalties:

- i) 20 – 30 years

## 4.52 Directing Institution Engaged in Offence under the Act

**Refer to Section 14 of the Anti-Human Trafficking Act No. 11 of 2008.** The offence is committed when a person directs an institution to commit an offence under the Act.

### 4.52.1 Ingredients of the Offences:

- i) The offender must have given directives to an institution
- ii) The offence must have been committed by the person communicating the directives and the institution

**Note: These are additional elements to an offence committed by institutions for any of the offences under the Act.**

### 4.52.2 Possible Defences:

- i) Person directing an institution had no knowledge or reasonable cause to suspect that his or her directive is related to the furtherance of an offence under the Act

### 4.52.3 Alternative Charges:

- i) Offences by corporate or unincorporated body C/S 371 of the Companies Act No. 10 of 2017;  
or
- ii) Offences by corporate or unincorporated body c/s 52 of the financial intelligence centre Act No. 46 of 2010

### 4.52.4 Prescribed Penalties:

- i) The penalty will be according to the specific offence that the institution would have committed.  
For example, if the institution was recruiting people who turned out to be trafficked and it is proved that an officer of the institution consented then the sentence will be as in section 3.

#### **4.53 Inviting Another Person to Provide or Make Available Money or Property for Furtherance of an Offence under Act**

**Refer to Section 15 (1) of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person invites another person to provide or make available money or property for furtherance of trafficking in persons or smuggling of migrants.

##### **4.53.1 Ingredients of the Offences:**

- i) Knowledge of the trafficking in persons or human smuggling situation.
- ii) Offender must invite another person to provide or make available money or property for furtherance of trafficking in persons.
- iii) The offender must have intent to use the money or property for the furtherance of the offence
- iv) The other person must provide money or property.
- v) The other person who provides money or property must have knowledge that it will be used for furtherance of the offence.

##### **4.53.2 Possible Defences:**

- i) The principal had no intention that the money or property be used for furtherance of the offence.
- ii) The accomplice had no knowledge the money or property would be used for the furtherance of the offence.

##### **4.53.3 Alternative Charges:**

- i) Support and meeting C/S 42 (1) of the Anti-Terrorism Act No 6 of 2023.
- ii) Harboursing a foreigner C/S 46 (1) (b)(viii) of the Immigration and Deportation Act No.18 of 2010.

##### **4.53.4 Prescribed Penalties:**

- i) The penalty will be in accordance with the specific offence committed.

#### 4.54 Providing Money or Property for Furtherance of Trafficking in Persons

**Refer to Section 15 (2) of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person provides money or property for furtherance of trafficking in persons.

##### 4.54.1 Ingredients of the Offences:

- i) Knowledge of the trafficking in persons or human situation.
- ii) Offender must provide or make available money or property for furtherance of trafficking in persons
- iii) The offender must have intent to use the money or property for the furtherance of the offence
- iv) The other person must provide money or property
- v) The other person who provides money or property must have knowledge that it will be used for furtherance of the offence

##### 4.54.2 Possible Defences:

- i) The principal had no intention that the money or property be used for furtherance of the offence
- ii) The accomplice had no knowledge the money or property would be used for the furtherance of the offence

##### 4.54.3 Alternative Charges:

- i) Support and meeting C/S 42 (1) of the Anti-Terrorism Act No 6 of 2023
- ii) Harboursing a foreigner C/S 46 (1) (b)(viii) of the Immigration and Deportation Act No.18 of 2010

##### 4.54.4 Prescribed Penalties:

- i) The penalty will be in accordance with the specific offence committed.

## **4.55 Providing Money or Property for Furtherance of Human Smuggling**

**Refer to Section 15 (2) of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 9 of the Amendment Act No. 16 of 2022.** The offence is committed when a person provides money or property for furtherance of human smuggling.

### **4.55.1 Ingredients of the Offences:**

- i) Knowledge of the human smuggling situation.
- ii) Offender must provide or make available money or property for furtherance of human smuggling.
- iii) The offender must have intent to use the money or property for the furtherance of the offence.
- iv) The other person must provide money or property.
- v) The other person who provides money or property must have knowledge that it will be used for furtherance of the offence.

### **4.55.2 Possible Defences:**

- i) The principal had no intention that the money or property be used for furtherance of the offence.
- ii) The accomplice had no knowledge the money or property would be used for the furtherance of the offence.

### **4.55.3 Alternative Charges:**

- i) Support and meeting C/S 42 (1) of the Anti-Terrorism Act No 6 of 2023.
- ii) Harboursing a foreigner C/S 46 (1) (b)(viii) of the Immigration and Deportation Act No.18 of 2010.

### **4.55.4 Prescribed Penalties:**

- i) The penalty will be in accordance with the specific offence committed.

#### **4.56 Use and Possession of Property in Furtherance of Offence under Act**

**Refer to Section 16 (1) of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person:

- i) Uses money or property for furtherance of trafficking in persons; or
- ii) Causes the other person to use money or property for furtherance of trafficking in persons; or
- iii) Permits the other person to use money or property for furtherance of trafficking in persons; or
- iv) Possesses money or property for furtherance of trafficking in persons.

##### **4.56.1 Ingredients of the Offences:**

- i) The offender must have knowledge that the use of money or property is for the furtherance of the offence; or
- ii) The offender must cause the other person to use money or property for furtherance of the offence; or
- iii) The offender must permit the other person to use the money or property for furtherance of the offence; or
- iv) An offender who possesses money or property must intend to use it for the furtherance of the offence.

##### **4.56.2 Possible Defences:**

- i) The offender was unaware that the use of the money or property was for the furtherance of the offence
- ii) The person in possession of the money or property had no intention of it being used in furtherance of the offence

##### **4.56.3 Alternative Charges:**

- i) Harboursing a foreigner C/S 46 (1) (b)(viii) of the Immigration and Deportation Act No.18 of 2010

##### **4.56.4 Prescribed Penalties:**

- i) The penalty will be in accordance with the specific offence committed.

#### **4.57 Entering into or Engaging in an Agreement to Conceal, Remove or Transfer Funds from Jurisdiction to Facilitate the Furtherance of Trafficking in Persons**

**Refer to Section 17 (1) of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person enters into or engages in an agreement to conceal, remove or transfer funds from jurisdiction to facilitate the furtherance of trafficking in persons.

##### **4.57.1 Ingredients of the Offences:**

- i) The offender entered into or became engaged in an arrangement to control on behalf of another person's funds.
- ii) The means are by concealment or removal from jurisdiction or by transfer to nominees or any other way.
- iii) The purpose is for furtherance of the offence under the Act.

##### **4.57.2 Possible Defences:**

Statutory defence:

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

##### **4.57.3 Alternative Charges:**

- i) Entering into an agreement with a foreigner for the conduct of any business or the carrying on of any profession or occupation C/S 46(1)(b)(iii) of the Immigration and Deportation Act No. 18 of 2010.

##### **4.57.4 Prescribed Penalties:**

- i) 10 – 20 years.

#### **4.58 Involvement in an Agreement to Conceal, Remove or Transfer Funds from the Jurisdiction to Facilitate the Furtherance of Smuggling of Migrants**

**Refer to Section 17 (1) of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 9 of the Amendment Act No. 16 of 2022.** The offence is committed when a person is involved in an agreement to conceal, remove or transfer funds from the jurisdiction to facilitate the furtherance of smuggling of migrants.

##### **4.58.1 Ingredients of the Offences:**

- i) The offender entered into or became engaged in an arrangement to control on behalf of another person's funds
- ii) The means are by concealment or removal from jurisdiction or by transfer to nominees or any other way
- iii) The purpose is for furtherance of the offence under the Act

##### **4.58.2 Possible Defences:**

###### **Statutory defence:**

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

##### **4.58.3 Alternative Charges:**

- i) Entering into an agreement with a foreigner for the conduct of any business or the carrying on of any profession or occupation C/S 46(1)(b)(iii) of the Immigration and Deportation Act No. 18 of 2010.

##### **4.58.4 Prescribed Penalties:**

- i) 10 – 20 years

#### **4.59 Providing a Financial Service with the Intention or Reasonable Suspicion that it will be Used for the Furtherance of Trafficking in Persons**

**Refer to Section 18 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person provides a financial service with the intention or reasonable suspicion that it will be used for the furtherance of trafficking in persons.

##### **4.59.1 Ingredients of the Offences:**

- Offender provided or made available or offered to provide or to make available any of the following:
  - i. Financial service or service for the safe keeping of any property
  - ii. Any forged or falsified document
  - iii. Access to any property, vehicle, vessel, aircraft, place or any other services
  - iv. Access to any communication equipment or capability to communicate
  - v. Any service skill or expertise of any kind
- Intent of the offender:
  - i. Offender intended for the same to be used for furtherance of the offence under this Act
  - ii. Offender had reasonable cause or suspected it would be used for furtherance of an offence under this Act

##### **4.59.2 Possible Defences:**

- i) Offender had no intention or reasonable cause to suspect that the support services would be used for the furtherance of the offence

##### **4.59.3 Alternative Charges:**

- i) Assisting, enabling or in any manner helping the foreigner to conduct any business or carry out any profession or occupation C/S 46 (1) of the Immigration and Deportation Act No. 18 of 2010

##### **4.59.4 Prescribed Penalties:**

- i) The penalty will be in accordance with the specific offence committed.

#### **4.60 Making Available a Financial Service with the Intention or Reasonable Suspicion that it will be used for the Furtherance of Smuggling of Migrants**

**Refer to Section 18 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 9 of the Amendment Act No. 16 of 2022.** The offence is committed when a person makes available a financial service with the intention or reasonable suspicion that it will be used for the furtherance of smuggling of migrants.

##### **4.60.1 Ingredients of the Offences:**

- Offender provided or made available or offered to provide or to make available any of the following:
  - i) Financial service or service for the safe keeping of any property
  - ii) Any forged or falsified document
  - iii) Access to any property, vehicle, vessel, aircraft, place or any other services
  - iv) Access to any communication equipment or capability to communicate
  - v) Any service skill or expertise of any kind
- Intent of the offender:
  - i) Offender intended for the same to be used for furtherance of the offence under this Act
  - ii) Offender had reasonable cause or suspected it would be used for furtherance of an offence under this Act

##### **4.60.2 Possible Defences:**

- i) Offender had no intention or reasonable cause to suspect that the support services would be used for the furtherance of the offence

##### **4.60.3 Alternative Charges:**

- i) Assisting, enabling or in any manner helping the foreigner to conduct any business or carry out any profession or occupation C/S 46 (1) of the Immigration and Deportation Act No. 18 of 2010

##### **4.60.4 Prescribed Penalties:**

- i) The penalty will be in accordance with the specific offence committed.

#### **4.61 Providing or Making Available or Offering to Providing Any Service of Safe Keeping of any Property; Forged or Falsified Document; with the Intention or Reasonable Suspicion that it will be Used for the Furtherance of Trafficking in Persons**

**Refer to Section 18 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person provides or makes available or offers to provide any service of safe keeping of any property; forged or falsified document; with the intention or reasonable suspicion that it will be used for the furtherance of trafficking in persons.

##### **4.61.1 Ingredients of the Offences:**

- Offender provided or made available or offered to provide or to make available any of the following:
  - i. Financial service or service for the safe keeping of any property
  - ii. Any forged or falsified document
  - iii. Access to any property, vehicle, vessel, aircraft, place or any other services
  - iv. Access to any communication equipment or capability to communicate
  - v. Any service skill or expertise of any kind
- Intent of the offender:
  - i. Offender intended for the same to be used for furtherance of the offence under this Act
  - ii. Offender had reasonable cause or suspected it would be used for furtherance of an offence under this Act

##### **4.61.2 Possible Defences:**

- i) Offender had no intention or reasonable cause to suspect that the support services would be used for the furtherance of the offence

##### **4.61.3 Alternative Charges:**

- i) Assisting, enabling or in any manner helping the foreigner to conduct any business or carry out any profession or occupation C/S 46 (1) of the Immigration and Deportation Act No. 18 of 2010

##### **4.61.4 Prescribed Penalties:**

- i) The penalty will be in accordance with the specific offence committed.

#### **4.62 Providing or Making Available or Offering to Providing Access to Any Premises, Vehicle, Vessel, Aircraft or Place; Access to Communication Equipment or**

**Capability; or Any Services, Skill or Expertise of Any Kind with the Intention or Reasonable Suspicion that it will be Used for the Furtherance of Trafficking in Persons.**

**Refer to Section 18 of the Anti-Human Trafficking Act No. 11 of 2008, read together with Section 3 of the Amendment Act No. 16 of 2022.** The offence is committed when a person provides or makes available or offers to provide access to any premises, vehicle, vessel, aircraft or place; access to communication equipment or capability; or any services, skill or expertise of any kind with the intention or reasonable suspicion that it will be used for the furtherance of trafficking in persons.

**4.62.1 Ingredients of the Offences:**

- Offender provided or made available or offered to provide or to make available any of the following:
  - i. Financial service or service for the safe keeping of any property
  - ii. Any forged or falsified document
  - iii. Access to any property, vehicle, vessel, aircraft, place or any other services
  - iv. Access to any communication equipment or capability to communicate
  - v. Any service skill or expertise of any kind
- Intent of the offender:
  - i. Offender intended for the same to be used for furtherance of the offence under this Act
  - ii. Offender had reasonable cause or suspected it would be used for furtherance of an offence under this Act

**4.62.2 Possible Defences:**

- i) Offender had no intention or reasonable cause to suspect that the support services would be used for the furtherance of the offence

**4.62.3 Alternative Charges:**

- i) Assisting, enabling or in any manner helping the foreigner to conduct any business or carry out any profession or occupation C/S 46 (1) of the Immigration and Deportation Act No. 18 of 2010

**4.62.4 Prescribed Penalties:**

- i) The penalty will be in accordance with the specific offence committed.

#### **4.63 Money Laundering - Engaging Directly or Indirectly in a Business Transaction that Involves Property Acquired Through Proceeds of an Offence Under this Act**

**Refer to Section 19 (1) (a) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person engages directly or indirectly in a business transaction that involves property acquired through proceeds of an offence under this Act.

##### **4.63.1 Ingredients of the Offences:**

- i) Offender engaged directly or indirectly in business transactions that involves property acquired with the proceeds of an offence under the Act.

##### **4.63.2 Possible Defences:**

- i) The offender did not directly or indirectly engage in a business transaction that involves any property acquired with the proceeds of an offence under this Act.

##### **4.63.3 Alternative Charges:**

- i) Money laundering C/S 23(1) of the financial intelligence Act No. 46 of 2010.
- ii) Section 39 and Section 4 of the Forfeiture of Proceeds of Crime Act No. 19 of 2010.
- iii) Prohibition of money laundering c/s 7 of the Act No 14 of 2001.

##### **4.63.4 Prescribed Penalties:**

- i) 15 – 20 years

#### **4.64 Money Laundering - Receiving or Possessing or Concealing or Disguising or Disposing or Bringing into the Republic Any Property Derived and Realized Directly or Indirectly from an Offence under this Act**

**Refer to Section 19 (1) (b) of the Anti-Human Trafficking Act No. 16 of 2022.** The offence is committed when a person;

- i) receives any property derived and realized directly or indirectly from an offence under this Act;
- ii) possesses any property derived and realized directly or indirectly from an offence under this Act;
- iii) conceals any property derived and realized directly or indirectly from an offence under this Act;
- iv) disguises any property derived and realized directly or indirectly from an offence under this Act;
- v) disposes of any property derived and realized directly or indirectly from an offence under this Act;
- vi) brings into the Republic any property derived and realized directly or indirectly from an offence under this Act.

##### **4.64.1 Ingredients of the Offences:**

An offender must;

- i) receive any property realized and derived directly or indirectly from an offence under the act;
- ii) retain or acquire property knowing that the property is realized or derived directly or indirectly from an offence under the Act;
- iii) conceal property knowing that the property is realized or derived directly or indirectly from an offence under the Act;
- iv) disguise property knowing that the property is realized or derived directly or indirectly from an offence under the Act;
- v) dispose of property knowing that the property is realized or derived directly or indirectly from an offence under the Act;

- vi) bring into the Republic any property knowing that the property is realized or derived directly or indirectly from commission of an offence under the Act

#### 4.64.2 Possible Defences:

- i) The offender did not receive, or was not in possession of, or conceal, or disguise, or dispose of or bring into the Republic any property derived and realized directly or indirectly from an offence under this Act;
- ii) The offender did not retain or acquire any property knowing that the property is derived or realized, directly or indirectly from an offence under this Act

#### 4.64.3 Alternative Charges:

- i) Money laundering C/S 23(1) of the financial intelligence Act No 46 of 2010
- ii) Section 39 and Section 4 of the Forfeiture of Proceeds of Crime Act No. 19 of 2010
- iii) Prohibition of money laundering c/s 7 of Act No. 14 of 2001

#### 4.64.4 Prescribed Penalties:

- i) 15 – 20 years

#### **4.65 Submitting False Information to Acquire a Certificate of a Victim of Trafficking**

**Refer to Section 22A (4) (i) and 22A (5) of the Anti-Human Trafficking Act No. 16 of 2022.**

The offence is committed when a person submits false information to acquire a certificate of a victim of trafficking.

##### **4.65.1 Ingredients of the Offences:**

- i) Information submitted
- ii) Based on the information submitted, certificate was issued
- iii) Submitted information should be false
- iv) The offender must have submitted false information
- v) The false information must be in relation to the issuance of a certificate to a victim of trafficking

##### **4.65.2 Possible Defences:**

- i) The offender did not know that the information submitted was false
- ii) The offender did not submit the false information
- iii) The information submitted is not false

##### **4.65.3 Alternative Charges:**

- i) Perjury section 104 of the Penal Code (note an alternative but there to address such instances)
- ii) False swearing Section 109 of the Penal Code
- iii) Uttering a false document Section 352 of the Penal Code
- iv) Forgery C/S 347 of Cap 87
- v) Making false statement C/S 144 of the trafficking Act
- vi) Providing false information Section 23 of the passport Act
- vii) Making false statement Section 46 (3)(a) of immigration and the Deportation Act
- viii) Giving an instigating officer false information C/S 53(3) (c) of the Narcotic drugs and psychotropic substances Act
- ix) Falsification of documents Section 10 of the prohibition of money laundering Act

##### **4.65.4 Prescribed Penalties:**

- i) Three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

#### **4.66 Failure by a Nurse or Labour Inspector or Social Worker or Medical Practitioner or Immigration Officer to Report and Refer Victim to an Authorized Officer**

**Refer to Section 25(5) of the Anti-Human Trafficking Act No. 11 of 2008, as amended by Act No. 16 of 2022.** The offence is committed when a nurse or labour inspector or social worker or medical practitioner or immigration officer fails to report and refer victim to an authorized officer.

##### **4.66.1 Ingredients of the Offences:**

- i) The offender must have been a nurse or labour inspector or social worker or medical practitioner or immigration officer
- ii) The offender must have had reasonable grounds to believe that a person was a victim of trafficking
- iii) Failure to report

##### **4.66.2 Possible Defences:**

- i) The offender had no reasonable ground to believe that the person was a victim of trafficking
- ii) The offender is not an immigration officer, labour inspector, social worker, medical practitioner or nurse
- iii) There is proof that a report was actually made

##### **4.66.3 Alternative Charges:**

- i) Concealing C/S 258 of the Penal Code
- ii) Neglect to prevent the commission of a crime C/S 393 of the Penal Code
- iii) Concealing C/S 38 of the Anti-Corruption Act No. 3 of 2012
- iv) Failure to disclose information C/S 27 of the Prohibition and Prevention of Money Laundering Act

##### **4.66.4 Prescribed Penalties:**

- i) Two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both

#### **4.67 Failure by an Authorized Officer to Respond to a Request for Assistance**

Refer Section 27(2) of the Anti-Human Trafficking Act No. 11 of 2008, as amended by Act No. 16 of 2022.

The offence is committed when an authorized officer fails to respond to a request for assistance.

##### **4.67.1 Ingredients of the Offences:**

- i) The offender must be an authorized officer as specified under the Act
- ii) The offender must have failed to respond to a request for assistance
- iii) There must have been a request made for assistance to an authorized officer

##### **4.67.2 Possible Defences:**

- i) Proof of no request received
- ii) Proof of response assistance was rendered
- iii) The offender is not an authorized officer i.e. police officer, an officer from the Anti- Corruption Commission, an officer from the Drug Enforcement Commission, an anti-human trafficking officer and an immigration officer

##### **4.67.3 Alternative Charges:**

- i) Disobedience of statutory duty C/S 126 of the Penal Code
- ii) Failure to render assistance C/S 210 of the Road Traffic Act

##### **4.67.4 Prescribed Penalties:**

- i) Administrative disciplinary action

#### **4.68 Obstructing an Authorized Officer from Executing their Duties**

**Refer to Section 29(3) (c) of the Anti-Human Trafficking Act No. 11 of 2008, as amended by Act No. 16 of 2022.** The offence is committed when a person obstructs an authorized officer from executing their duties.

##### **4.68.1 Ingredients of the Offences:**

- i) The offender must have obstructed an authorized officer
- ii) The offender must have knowledge of the presence and purpose of the officer

##### **4.68.2 Possible Defences:**

- i) The offender did not obstruct an authorized officer
- ii) The offender did not have knowledge of the presence and purpose of the officer

##### **4.68.3 Alternative Charges:**

- i) Obstructing, assaulting immigration officer C/S 53(1) of Immigration and Deportation Act no.18 of 2010

#### **4.69 Delaying or Interfering with or Wilfully Obstructing an Authorized Officer in the Exercise of Powers**

**Refer to Section 50(3) (c) of the Anti-Human Trafficking Act No. 11 of 2008.** The offence is committed when;

- i) a person delays an authorized officer in the exercise of property tracking duties relating to an offence of trafficking in persons,
- ii) a person interferes with an authorized officer's exercise of property tracking duties relating to an offence of trafficking in persons,
- iii) a person wilfully obstructs an authorized officer in the exercise of property tracking duties relating to an offence of trafficking in persons.

##### **4.69.1 Ingredients of the Offences:**

- i) Offender must have delayed or interfered with or wilfully obstructed an authorised officer in the exercise of their powers
- ii) The delay or interference with or obstruction may also be after the order of the High Court

##### **4.69.2 Possible Defences:**

- i) The delay or interference with or obstruction was not wilfully done
- ii) Where evidence for the delay requires physical presence, one can raise an alibi
- iii) Obstruction was as a result of an authorised officer not having an identify document or court authority

##### **4.69.3 Alternative Charges:**

- i) Obstruction of justice C/S 31 of the Anti-Corruption Commission Act
- ii) Wilful obstruction C/S 250 (b) and (d) of the Penal Code
- iii) Conspiracy to defeat justice and interference with witness C/S 112 of the Penal Code
- iv) Obstruction C/S 12 of the Cyber and Security Act
- v) Obstruction C/S 68 of the Cyber and Security Act (reference to Part 9 the Cyber and Security Act)

##### **4.69.4 Prescribed Penalties:**

- i) Up to 20 years

#### **4.70 Failure to Comply with an Order Under this Act**

**Refer to Section 63(4) of the Anti-Human Trafficking Act No. 11 of 2008.** The offence is committed when a person fails to comply with an order under this Act.

##### **4.70.1 Ingredients of the Offences:**

- i) There must be an order made by a competent body
- ii) There must be an obligation to act or omit to do so by the offender
- iii) The order must be brought to the attention of the offender in person
- iv) The offender must willfully or recklessly fail to comply with the order

##### **4.70.2 Prescribed Penalties**

- i) Five hundred thousand penalty units

#### **4.71 Failure to Disclose Information Under this Act**

**Refer to Section 68(1) of the Anti-Human Trafficking Act No. 11 of 2008.** The offence is committed when a person fails to disclose information under this Act.

##### **4.71.1 Ingredients of the Offences:**

- i) There must be an obligation not to disclose information under this Act,
- ii) The obligation must be known or reasonably expected to be known by the offender,
- iii) The offender must not be under the client-legal practitioner relationship relating to a matter under this Act,
- iv) The information so disclosed or interfered with must relate to an investigation,
- v) The information must interfere or reasonably be expected to interfere with investigations,
- vi) The offender must wilfully or negligently make a disclosure.

##### **4.71.2 Prescribed Penalties**

- i) 10 – 15 years

#### **4.72 Publication of Disclosure of Information**

**Refer to Rule 8 (2) of the first schedule of the Anti-Human Trafficking Act No. 11 of 2008.**

The offence is committed when a person's Publication of disclosure of information is considered negligent under this Act.

##### **4.72.1 Ingredients of the Offences:**

- i) There must be information obtained through course of duty by the offender,
- ii) The information must have been communicated to an authorized person,
- iii) The communication must be wilful or by negligence,
- iv) The offender must be under a duty under this Act not to communicate such information without authority.

#### **4.73 Compensation to Victim**

**Refer to Section 58 (1) of the Anti-Human Trafficking Act No. 11 of 2008.** The Court may in addition to any punishment under the Act, order a person convicted to compensate the victim.

##### **4.70.1 Elements to be satisfied for compensation to the victim to be granted:**

- i) The person must have been convicted of an offence under this Act
- ii) The convicting court must have ordered for a compensation
- iii) The compensation must relate to damage, injury or loss under this Act
- iv) The beneficiary must have been certified as a victim of trafficking in persons under this Act

##### **Note:**

- i) The court may in addition to any punishment under the Act, order a person convicted to compensate the victims

#### **4.74 Compensation to the State**

**Refer to Section 59 of the Anti-Human Trafficking Act No. 11 of 2008.** The Court may in addition to any, order for payment to the State.

##### **4.71.1 Elements to be Satisfied for Compensation to the State to be Granted:**

- i) The person must have been convicted of an offence under this Act
- ii) The convicting court must have made punishment or other order against a person
- iii) The compensation must relate to expenses incurred or reasonably expected to be incurred in relation to a matter under this Act.
- iv) the compensation must be made at the instance of the State
- v) The compensation may be made whether or not the victim has been compensated

##### **Note:**

- i) The court may in addition to any punishment under the Act, order a person convicted to compensate the victims

## PART THREE

## 5. GUIDANCE TO PROSECUTORS AND THE COURT ON SENTENCING

- Commission of five or more counts of trafficking in persons - Section 3 (7) as amended provides for those charged and convicted by a court to be sentenced to 25 - 35 years.
- Section 13 provides for 20 – 30 years for offences by institutions with consent or connivance of an officer of institution or neglect on the part of an officer of the institution.
- Finding by court that an employer or principal intentionally engages in trafficking in persons - Section 3 (11) as amended states that this a ground for revoking a license or registration of the employer or principal to operate.
- Directing institution engaged in offence under the Act - Section 14 provides that the penalty will be according to the specific offence that the institution would have committed. For example, if the institution was recruiting people who turned out to be trafficked and it is proved that an officer of the institution consented then the sentence will be as in section 3.
- Section 16 (2) prohibits possession of money or other property for furtherance of trafficking in persons – Anything done for the furtherance of trafficking in persons constitutes an offence.
- Compensation to victim pursuant to section 58(1) of the Anti-Human Trafficking Act No. 11 of 2008 - The Court may in addition to any punishment under the Act, order a person convicted to compensate the victim.
- Compensation to the State pursuant to section 59 of the Anti-Human Trafficking Act No. 11 of 2008 - The Court may in addition to any, order for payment to the State.

Note: Prosecutors should be on a look out for facts and evidence suggesting such conspiracy to further offences under the Act

## ANNEX 1: SPECIMEN INDICTMENTS

THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

STATEMENT OF OFFENCE

TRAFFICKING IN PERSONS

(Contrary to Section 3 of the Anti-Human Trafficking Act No. 11 of 2008 of the Laws of Zambia)

PARTICULARS OF OFFENCE

Mupupu Mbalani, John Kuluku and Peter Ekisipulotashoni on 5 January 2009, in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, and whilst using force or threats of force and concealment of identity documents, for the purpose of exploitation, did traffic Diana Distress.

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**FOR/DIRECTOR OF PUBLIC PROSECUTIONS**

## THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

### STATEMENT OF OFFENCE

#### ACCESSORY AFTER THE FACT TO TRAFFICKING IN PERSONS

(Accessory after the fact to trafficking in persons, contrary to Section 10 of the Anti-Human Trafficking Act No. 11 of 2008 of the Laws of Zambia).

#### PARTICULARS OF OFFENCE

Bisama Kabisabisa, well knowing that Mupupu Mbalani, John Kuluku and Peter Ekisipulotashoni, did on 5 January 2009 in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, and whilst using force or threats of force and concealment of identity documents, for the purpose of exploitation, did traffic Diana Distress, did on 12 January 2009, in the Lusaka District of the Lusaka Province of the Republic of Zambia, and on other days thereafter, receive, conceal, comfort, harbour, assist, maintain and provide a safe haven for the said Mupupu Mbalani, John Kuluku and Peter Ekisipulotashoni.

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**FOR/DIRECTOR OF PUBLIC PROSECUTIONS**

THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

STATEMENT OF OFFENCE

ATTEMPTS TO TRAFFIC IN PERSONS

(Attempts to traffic in persons, contrary to Section 12 of the Anti-Human Trafficking Act No. 11 of 2008  
of the Laws of Zambia)

PARTICULARS OF OFFENCE

Mambala Kushishita, on 25 December 2008, in the Lusaka District of the Lusaka Province of the Republic of Zambia, with intent to traffic one Diana Distress, caused the said Diana Distress to be abducted and transported and did cause the same Diana Distress to receive a letter containing threats of injury or detriment to be caused to Further Distress, a family member.

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**FOR/DIRECTOR OF PUBLIC PROSECUTIONS**

## ANNEX 2: PENALTIES DESCRIBED IN THE ANTI-HUMAN TRAFFICKING ACT, AS AMENDED

| Sections in the Act               | Offence                                                                                                                                                                                             | Penalties                                                                             |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <b>Section 3 (1) as amended</b>   | Intentionally engaging in trafficking in persons                                                                                                                                                    | 20 – 30 years                                                                         |
| <b>Section 3 (2) as amended</b>   | Trafficking for sexual exploitation                                                                                                                                                                 | 25 – life                                                                             |
| <b>Section 3 (3) as amended</b>   | Trafficking by abduction                                                                                                                                                                            | 25 – 35 years                                                                         |
| <b>Section 3 (4) as amended</b>   | Trafficking resulting in death or grievous harm of a victim                                                                                                                                         | 35 – life                                                                             |
| <b>Section 3 (5) as amended</b>   | Public officer facilitating and using person's office in furtherance of an offence under the Act                                                                                                    | 25 – 35 years                                                                         |
| <b>Section 3 (6) as amended</b>   | Offender is person involved in management of an institution or organized criminal group engaged in trafficking in persons                                                                           | 25 – 35 years                                                                         |
| <b>Section 3 (7) as amended</b>   | Charged and convicted by a court for the commission of five or more counts of trafficking in persons                                                                                                | 25 – 35 years                                                                         |
| <b>Section 3 (8) as amended</b>   | Trafficking for removal of the victim's body parts                                                                                                                                                  | 25 – life                                                                             |
| <b>Section 3 (11) as amended</b>  | Finding by court that an employer or principal intentionally engages in trafficking in persons                                                                                                      | Ground for revoking a licence or registration of the employer or principal to operate |
| <b>Section 3A. (1) as amended</b> | Person who recruits, transports, transfers, harbours, receives or obtains a child within or across the territorial boundaries of Zambia for the purposes of exploitation <b>(Child trafficking)</b> | 35 – life                                                                             |
| <b>Section 3A. (3) as amended</b> | Parent or guardian or a person having parental responsibility for a child who traffics a child or permits the trafficking of a child                                                                | 35 – life                                                                             |
| <b>Section 3A. (4) as amended</b> | Trafficking resulting in the death or grievous bodily harm of a child                                                                                                                               | 35 – life                                                                             |
| <b>Section 4 (1) as amended</b>   | Person intentionally engaging in conduct that causes another person to enter into debt bondage                                                                                                      | 15 – 25 years                                                                         |

| Sections in the Act                 | Offence                                                                                                                                                                                                                                                                                | Penalties                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Section 5</b>                    | Intentionally destroying, confiscating, possessing or tampering with a victim's identity document, passport or other travel documents in furtherance of trafficking in persons                                                                                                         | 15–25 years                                                                                                                                                                                                                                                                                                                                  |
| <b>Section 6 (1) as amended</b>     | Intentionally benefiting financially or otherwise, from the services of a victim or using or enabling use of a victim's services                                                                                                                                                       | 10 – 25 years                                                                                                                                                                                                                                                                                                                                |
| <b>Section 6 (2)</b>                | Intentionally using or procuring the services of a victim for the purpose of sexual exploitation or the worst forms of child labour                                                                                                                                                    | 15 – 25 years                                                                                                                                                                                                                                                                                                                                |
| <b>Section 7 (1) (a) as amended</b> | Person knowingly transports a victim or is in charge of a conveyance which facilitates trafficking in persons                                                                                                                                                                          | Conviction is to the same penalty as if the person had been convicted of the offence i.e. the person will be sentenced to a term as provided for under the offence. For example, if the person trafficked is a child, the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1) |
| <b>Section 7 (1) (b) as amended</b> | Person knowingly leases or subleases or allows any room, house or building or premises to be used for harbouring a victim                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                              |
| <b>Section 7 (1) © as amended</b>   | Person knowingly advertises, publishes prints, broadcasts, distributes or causes the advertisement, publication, printing or broadcasting or distribution of information facilitating trafficking in persons by an means including of internet or other information knowingly          |                                                                                                                                                                                                                                                                                                                                              |
| <b>Section 8 (2)</b>                | Failure by internet service provider operating in Zambia to report site on its server that advertises, publishes prints, broadcasts, distributes or causes the advertisement, publication, printing or broadcasting or distribution of information facilitating trafficking in persons | Fine not exceeding 300,000 penalty units or 3 years; or both                                                                                                                                                                                                                                                                                 |
| <b>Section 9 (1) as amended</b>     | Person smuggling another person in or out of Zambia or participates in smuggling                                                                                                                                                                                                       | 15 – 20 years                                                                                                                                                                                                                                                                                                                                |
| <b>Section 9 (2)</b>                | Where smuggling results in death of the person being smuggled                                                                                                                                                                                                                          | Life                                                                                                                                                                                                                                                                                                                                         |
| <b>Section 9 (3)</b>                | Person producing, obtaining, procuring or possessing a fraudulent travel or identity document to facilitate smuggling of a person                                                                                                                                                      | 10 – 15 years                                                                                                                                                                                                                                                                                                                                |
| <b>Section 10</b>                   | Harbouring, concealing or providing a safe haven for any offender under this Act                                                                                                                                                                                                       | 2 -5 years                                                                                                                                                                                                                                                                                                                                   |

| Sections in the Act   | Offence                                                                                                                                 | Penalties                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Section 11</b>     | Aiding, abetting, counselling, procuring, inciting or soliciting the commission of an offence under this Act                            | Conviction is to the same penalty as if the person had been convicted of the offence. The sentence will be in relation to the specific offence that the person aided and abetted. For example, if the aiding was related to trafficking in persons the sentence will be according to the penalties provided in section 3. If the person aided and abetted the offender in a case where a child was involved the sentence will be as provided in section 3A, if it involves adults the sentence will be as provided in section 3(1) |
| <b>Section 12</b>     | Attempted human trafficking                                                                                                             | 10–20 years                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Section 13</b>     | Offences by institution with consent or connivance of an officer of institution or neglect on the part of an officer of the institution | 20 – 30 years                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Section 14</b>     | Directing institution engaged in offence under the Act                                                                                  | The penalty will be according to the specific offence that the institution would have committed. For example, if the institution was recruiting people who turned out to be trafficked and it is proved that an officer of the institution consented then the sentence will be as in section 3.                                                                                                                                                                                                                                    |
| <b>Section 15 (1)</b> | Person who intentionally invites another person to provide or make available money or property for furtherance of human trafficking     | The penalty will be in accordance with the specific offence committed.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

| Sections in the Act               | Offence                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Penalties                                                                                                 |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| <b>Section 15 (2)</b>             | Person who knowingly provides money or property for furtherance of human trafficking                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                           |
| <b>Section 16 (1)</b>             | Person who knowingly uses, or causes or permits any person to use, money or property for furtherance of human trafficking                                                                                                                                                                                                                                                                                                                                     |                                                                                                           |
| <b>Section 16 (2)</b>             | Person who possesses money or other property and intends that it should be used for furtherance of human trafficking                                                                                                                                                                                                                                                                                                                                          |                                                                                                           |
| <b>Section 17 (1)</b>             | Person entering into or involved in an agreement to conceal, remove from jurisdiction or transfer funds to others to facilitate the furtherance of an offence under this Act                                                                                                                                                                                                                                                                                  | 10 – 20 years                                                                                             |
| <b>Section 18</b>                 | Person providing or making available or offering to provide or make available a financial service or any service of safe keeping of any property; forged or falsified document; access to any premises, vehicle, vessel, aircraft or place; access to communication equipment or capability; or any services, skill or expertise of any kind with the intention or reasonable suspicion that it will be used for the furtherance of an offence under this Act | The penalty will be in accordance with the specific offence committed.                                    |
| <b>Section 19 (1) as amended</b>  | Person engaging directly or indirectly in a business transaction that involves property acquired through proceeds of an offence under this Act; or who receives, possesses, congeals, disguises, disposes, brings into Zambia any property derived directly or indirectly from proceeds of an offence under this Act; or who retains or acquires any property knowingly derived or realised, directly or indirectly from an offence under this Act            | 15 -20 years                                                                                              |
| <b>Section 22A (5) as amended</b> | A person who submits false information in accordance with subsection (4), commits an offence                                                                                                                                                                                                                                                                                                                                                                  | Three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both. |
| <b>Section 25(5)</b>              | Failure to report and refer victim to an authorized officer                                                                                                                                                                                                                                                                                                                                                                                                   | Two hundred                                                                                               |

| Sections in the Act                 | Offence                                                                                                                          | Penalties                                                                                                     |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
|                                     |                                                                                                                                  | thousand penalty units or to imprisonment for a term not exceeding two years, or to both.                     |
| <b>Section 27(2)</b>                | Failure of authorized officer to respond to a request for assistance                                                             | Administrative disciplinary action                                                                            |
| <b>Section 29 (3) ©</b>             | Wilfully obstructing authorized officer                                                                                          | Sentence for obstruction of authorized officer not provided                                                   |
| <b>Section 50 (3)</b>               | Person delaying, inters and wilfully obstructs an authorized officer in property tracking relating the offence of human tracking | Up to 20 years                                                                                                |
| <b>Section 63(4)</b>                | Failure by bank, financial service provider or financial institution to comply with an order under this Act                      | Five hundred thousand penalty units                                                                           |
| <b>Section 68(1)</b>                | Disclosure of information                                                                                                        | 10 – 15 years                                                                                                 |
| <b>Under the Schedule Rule 8(2)</b> | Prohibition of publication of disclosure of information to authorised persons                                                    | Two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.         |
| <b>Section 58(1)</b>                | Compensation to victim                                                                                                           | The Court may in addition to any punishment under the Act, order a person convicted to compensate the victim. |
| <b>Section 59</b>                   | Compensation to the State                                                                                                        | The Court may in addition to any punishment, order for payment to the State.                                  |

