



USAID | **ZAMBIA**
FROM THE AMERICAN PEOPLE

Framework & Draft Legislation to Combat Human Trafficking in Zambia

Development of an Effective National Policy

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This publication was produced for review by the United States Agency for International Development. It was prepared by Jill Thompson, consultant for Chemonics International Inc.



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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

CONTENTS

Acronyms.....	iii	
Introduction.....	1	
Deliverable 1: Issue Paper		
Executive Summary.....	7	
PART I Background on Human Trafficking.....	9	
PART II Analysis of Domestic Laws Available to Combat Human Trafficking at the National and Regional Level	22	
PART III Elements of a National Law and Policy Framework.....	51	
Deliverable 2: Draft National Policy to Combat Human Trafficking 2007.....		74
Chapter One: Introduction	82	
Chapter Two: Situational Analysis.....	84	
Chapter Three: Vision, Rationale, and Guiding Principles	103	
Chapter Four: Objectives and Measures.....	106	
Chapter Five: Implementation Framework	118	
Deliverable 3: Draft Annotated Anti-Trafficking Legislation.....		124
ANNEX A: Additional Legal Provisions for Further Consideration		140
ANNEX B: Consultation Workshop Agenda		144
ANNEX C: SOW for Assignment.....		147

ACRONYMS

ACC	Anti-Corruption Commission
ARV	Anti-retroviral treatment
CBO	Community-based organization
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COMESA	Common Market for East and Southern Africa
CRC	United Nations Convention on the Rights of the Child
CSD	Community Safety Division (Zambian Police)
CTOC	United Nations Convention against Transnational Organized Crime
DEC	Drug Enforcement Commission (Zambia)
DPP	Office of the Director of Public Prosecutions
DRC	Democratic Republic of the Congo
FBO	Faith- based organization
ILO	International Labour Organization
IOM	International Organization for Migration
IPEC	International Programme for Elimination of Child Labour
MIDSA	Migration Dialogue for Southern Africa
NGO	Non-governmental organization
OVC	Orphans and other Vulnerable Children
POCA	Prevention of Organized Crime Act (South Africa)
SACTAP	Southern Africa Counter-Trafficking Assistance Program
SADC	Southern African Development Community
SARPPCO	Southern Africa Regional Police Chiefs Cooperation Organization
SOCA	National Prosecuting Authority Sexual Offences and Community Affairs Unit (South Africa)

UN	United Nations
UNHCR	United Nations High Commissioner for Human Rights
UNODC	United Nations Office on Drugs and Crime
VSU	Victim Support Unit (Zambia)
VTC	Voluntary Testing and Counseling (for HIV/AIDS)
ZLDC	Zambian Law Development Commission

INTRODUCTION

At the request of USAID/Zambia, an assessment was conducted by the Anti-Trafficking Task Order to review existing laws and the legal system as it pertains to the penalties for Human Trafficking, provide guidance on measures to strengthen the government and institutional responses to trafficking, and to draft anti-trafficking legislation and policy framework for Zambia. This task order is managed by Chemonics International Inc. as a holder of the Women in Development Indefinite Quantity Contract (WID IQC), which is funded through USAID/EGAT/WID. The assessment team consisted of an international consultant, Jill Thompson, and representatives of the Zambian Law Development Commission (ZLDC).

An estimated 600,000 to 800,000 persons are trafficked across international borders every year world-wide (U.S. Department of State 2006). Zambia has not been spared. Zambia is seen as a source, destination and transit country for trafficking in persons, and the Zambian Government has noted increasing numbers of reported cases in the past several years. Although human trafficking is an age-old practice, Zambia recorded its first case of trafficking in December, 1999. An Australian male was arrested at the Chirundu border post while allegedly trying to export five Zambia teenage girls to Australia for purposes of prostitution. The man was acquitted on the grounds of inadequate legal provisions to deal with such cases (Times of Zambia, 14 July, 2003). Five years later, another clear-cut case of human trafficking occurred in Zambia when a Congolese woman was caught traveling with 14 children en route to South Africa. Once again, the Zambian laws were inadequate for prosecution and the woman was only charged two million Kwacha for passport fraud and was later released (Times of Zambia, June 2005).

According to the US Department of State 2006 Trafficking in Persons Report, Zambia was placed on Tier 2. The Report states that the Government of Zambia does not fully comply with the minimum standards for the elimination of trafficking; however it is making significant efforts to do so.

During the past years, Zambia has demonstrated significant progress in its effort to combat trafficking in persons. While Zambia does not have comprehensive anti-trafficking legislation, it has taken steps to strengthen its legal framework in terms of human trafficking offences. In November, 2004, the Zambian parliament passed amendments to the Employment of Children and Young Persons Act criminalizing worst forms of child labour. As amended, the Act prohibits all forms of slavery and slavery-like practices, child trafficking, forced and bonded labour and the use of

children in prostitution, pornography and other illicit activities. In 2005, Parliament amended the Penal Code, Cap 87 of the Laws of Zambia, to include a distinct offence of human trafficking. Although a step forward, the new law is inadequate as it does not address all activities connected with human trafficking and does not meet the requirements of the UN Trafficking Protocol. Moreover, it does not include any provisions to protect victims of trafficking.

Trafficking in humans thrives in an environment of poverty and deprivation. According to the UNDP report on the Millennium Development Goals, "A Critical Analysis of the Zambia Experience," statistics in Zambia can be overwhelming:

- *Nearly 70% of Zambia lived below poverty line in 1996.*
- *The percentage of persons living in poverty in rural areas is considerably higher than in urban areas. Unemployment rates are pegged at 50%*
- *In 1997, the Per Capita Income was US\$308.*
- *Nearly three quarters of Zambia's children live below the poverty line*

Adding to the risk factor of poverty, the HIV/AIDS pandemic in Zambia has contributed to the rise in orphans and street children, who are targets for human traffickers because they lack a community safety net to protect them. In 2004, it was estimated that nearly one million Zambians are HIV-positive with an anticipated 100,000 new AIDS cases by the end of that year. The number of orphans in Zambia is nearing one million.

The Issue Paper

Prior to conducting the assessment, Jill Thompson conducted an in-depth analysis of the current legal framework available to address human trafficking in Zambia, identifying gaps and developing recommendations for reform in the area of prosecution, prevention and victim assistance. She also conducted a literature review and researched the status of counter trafficking laws and policies in Africa, especially within the South African Development Community (SADC) member states. This led to the development of an issue paper (Deliverable 1), which was used in workshops with interested stakeholders as an initial step in the development of a national policy on trafficking. This issue paper examined, with a view to establishing stronger criminal offences and legal protection for trafficked victims, the existing legislative framework for combating trafficking, government administrative support systems, and enforcement mechanisms. To the extent possible, Ms Thompson also looked at the impact of traditions, cultures and customary laws and practices on the rights of women and children and how they contribute to human trafficking; the extent to which employment agencies and recruitment centres facilitate human trafficking; and the impact of existing labor laws especially those relating to children and young persons.

Ms. Thompson worked directly with the Ministry of Home Affairs, USAID/Zambia, the U.S. Embassy Government, Ministry of Justice and the Zambia Law Development

Commission (ZLDC). In addition, she consulted with the National Task Force on Human Trafficking, which included representatives from:

- Ministry of Home Affairs
- Department of Immigration
- Drug Enforcement Commission
- Anti-corruption Commission
- Department of Police – Victim Support Unit and Prosecutions
- Zambia Prisons Service
- Department of National Registration, Passport and Citizenship
- Ministry of Youth, Sport and Child Development
- Ministry of Education
- Ministry of Labor and Social Security
- Ministry of Foreign Affairs
- Ministry of Community Development and Social Welfare
- Ministry of Information and Broadcasting Services
- Office of the President
- Gender in Development Division (Cabinet Office)

Through the consultation workshops, Ms. Thompson also obtained inputs from non-governmental and international organizations, including:

- The Anglican Project
- United Nations International Childrens Emergency Fund
- International Organization for Migration (IOM)
- International Labour Organization (ILO)
- Young Women Christians Association (YWCA), and
- Jesus Cares Ministries

The Consultation Workshops

After finalizing the issue paper, Ms. Thompson conducted three consultation workshops to educate officials on the issue of trafficking and to define issues in developing the national policy framework and the legislation. The meeting agenda for these workshops is attached to this report as Annex B. Participants included representatives from immigration, police, the judiciary, including prosecutors, labor, social welfare, international organizations and local NGOs. The team member from the Ministry of Justice prepared the rapporteur's report, which served as the basis for development of the national policy framework. The issue paper was prepared to help stakeholders - who were, for the most part, unfamiliar with the issue of trafficking - to participate more effectively in the workshops.

In conjunction with the regional workshops, the team conducted three one-day site visits to immigration posts at major borders: Chirundu, Kasumbalesa, and Kazungula. At each border they toured the facility and conducted interviews with border control officials, police, and other relevant stakeholders. The three border visits were undertaken during the period October 20-November 2, 2006.

Following the workshops, Ms. Thompson met separately with various stakeholders in Lusaka, including The International Labor Organization, the Labour Department, the

immigration department legal team, and the superintendent of police, to clarify certain issues and follow-up on questions relevant to the anti-trafficking legislation.

The first workshop, a two day consultative meeting in Lusaka with a one day visit to Chirundu to conduct the site interviews with security personnel, border control officials and other relevant stakeholders, was very successful. Several high-level people attended, including the Director of Public Prosecutions and the Chief Immigration Officer, as well as representatives from most of the relevant ministries and several NGOs. The team spent about half of the two days working in small groups, which seemed to work well, then finished the second day with presentations and debate in plenary. The moderator, Professor Anyangwe, a law professor from the University of Zambia and the Deputy Minister of Home Affairs formally opened the workshop. The consultation process used as the format for the workshop served a very important purpose in terms of building a sense of ownership among the Zambian stakeholders over the proposed policy and legislation, and also helped to raise awareness.

The last two consultation workshops were in the Copperbelt and Livingstone on October 25-26 and November 1-3, respectively. The team also conducted one-day visits to nearby border posts. Mr. R. Mongole, of the National Institute of Public Administration, moderated the proceedings. Attendance and participation at the workshops was good and a number of high-level people attended. Unfortunately, however, few of the people outside Lusaka (with the possible exception of the immigration officers) were familiar with the concept of human trafficking or had any personal experience dealing with trafficking cases. Many were encountering the concept for the first time. As a result, the team spent a fair portion of the workshop introducing the participants to the concepts and issues, rather than getting detailed inputs from them. What inputs the team received from participants were usually fairly general. For example, while participants agreed that the government should try to coordinate better and provide assistance to victims of trafficking, they were unable to determine how best to implement these general recommendations. Moreover, many of the police, prosecutors, and magistrates had never seen the amended penal code passed last year or the child labor laws passed in 2004, so they were not in a position to provide useful input on how the current framework could be improved. Stakeholders agreed, for example, that the term “trafficking” should be defined, but were uncomfortable going much beyond that to further define terms like “exploitation” or “slavery-like practices.”

Despite this, the workshops were useful in building awareness and interest among stakeholders. On the first day, people started to understand that various cases or situations they had encountered in the past may have involved human trafficking. Participants were generally very interested in the issue and committed to staying involved. This laid a good foundation for setting up regional and local stakeholder coordinating and monitoring groups when the time comes to implement the policy.

Most of the participants agreed with the Protocol recommendations and agreed that the domestic law and policy should generally follow that framework. It was also helpful to see where controversy was likely to arise. The two groups were quite divided, for example, on issues like “victim-friendly” court procedures and some aspects of victim assistance and compensation, with some taking a very progressive

view and others arguing for a much more conservative approach. The groups tended to avoid some of the really hard questions around exploitation of children such as early marriage, “internal” forms of child trafficking and prostitution. Not surprisingly, it seemed that participants were much more comfortable with the idea of combating Congolese traffickers than addressing the harder, “gray” areas involving human trafficking within Zambian borders. Finally, the groups did not agree on the key issues of whether Zambia needs a separate Trafficking Act and a formal coordinating body of some kind, or whether the same outcome can be achieved through amendments to existing legislation and strengthening of existing institutions. There is resistance to the idea of creating another specialized act or any kind of “new institution” or agency, although most people agree that some kind of national coordination is required.

The Draft Legislation and Policy

Following the consultation workshops, the team began formulating a national policy to combat human trafficking and a draft anti-trafficking Bill. (Deliverables 2 and 3). Ms. Thompson advised the team on the content of the legislation and prepared an annotated draft of the recommended criminal and protection provisions. She also prepared a draft of the National Policy. The two drafts were submitted in November to the ZLDC and Legal Liason from the Ministry of Justice for review. In February 2007, the team facilitated a five-day workshop with representatives of the National Task Force on Trafficking in Persons to finalize the national policy document and to review the legislative proposals. Ms. Thompson subsequently redrafted the policy and some of the legislative provisions to reflect the Task Force’s comments and proposed changes. It is now up to the Zambian members of the team to refine the proposed legislation and redraft the language in the "Zambian style."

In Zambia, Cabinet approval of a national policy is required before a government ministry is allowed to submit draft legislation to the Ministry of Justice, as the legislation has to reflect the approved policy. Because of this, it was necessary to spend more time under the consultancy on the development of the policy as compared to the legislation. The draft policy has now been submitted to the Ministry of Home Affairs for final approval, and then it will be submitted to the Cabinet. The policy will not be fully finalized until it is approved by Cabinet..

The Recommendation

Although significant progress was made on the counter-trafficking legislation, there was not adequate time under the contract to prepare a final Bill ready to submit to Parliament. As a practical matter, it will be necessary for the Bill to reflect the contents of the national policy, which has not yet been approved by Cabinet. Should the Cabinet disagree with aspects of the proposed policy, the legislation will have to be amended accordingly. Moreover, it became clear in the course of the project that the proposed legislation will need to be harmonized with other existing legislation (particularly immigration, penal code and child labor provisions) to resolve potential conflicts and achieve consistency in terms of scope, definitions and penalties. To do so, specific amendments to existing legislation must be formulated as attachments to the proposed anti-trafficking bill. In order to insure that the legislation can be implemented, certain details also need to be further researched, debated with

relevant stakeholders and incorporated into the proposed legislation. These include, for example, mechanisms and procedures for asset forfeiture and witness protection, the role of the Juveniles Court and the Ministry of Social Welfare in overseeing the care of trafficked children, and the role of the Ministry of Foreign Affairs and overseas missions. In addition, other key issues, such as the definition of exploitation, the need for victim-friendly courts, the rights of trafficked persons to access services or seek compensation, and the appropriate government structure to implement the national policy and oversee the legislation were not fully resolved, and require further consultation and refinement.

A “Phase 2” is therefore recommended to follow-up on these issues and finalize the proposed Bill. Ideally, this Phase 2 would take place after the policy framework has been reviewed and accepted by the Cabinet. USAID/Zambia should continue to work with the ZLDC to finalize the policy document and the legislation, including funding the publishing and dissemination of the Policy in Zambia once it is approved.

Contents of Report

The contents of this report include the documents prepared for the ZLDC in support of this legislation: Deliverable 1, the issue paper; Deliverable 2, the National Policy (policy framework); and Deliverable 3, the annotated draft legislation. Attached as annexes are the scope of work for this assignment (Annex A), the meeting agenda for stakeholder consultations (Annex B), and an outline for additional provisions for consideration by the sub-committee drafting the legislation (Annex C). Of the issues contained in the outline, only the "essential" protection provisions (along with the criminal offenses and general criminal law provisions) have been incorporated into the draft legislation to date. These provisions are based on the recommendations coming out of the stakeholder consultations, the requirements of the UN Trafficking Protocol and to the extent possible, international best practice.

DELIVERABLE 1: ISSUE PAPER

EXECUTIVE SUMMARY

Trafficking in human beings is a relatively new, but serious issue emerging across Southern Africa. At present, none of the countries in the SADC region have in place a legal or policy framework adequate to deal with this complex phenomenon. A number of recent cases involving trafficking in the region have exposed gaps in the existing legal framework, and have spurred lawmakers to review their domestic legislation to strengthen that framework. In addition, countries that have ratified or acceded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “Trafficking Protocol”) must now take steps to incorporate new international obligations into their domestic legal framework.

The Government of Zambia is committed to combating human trafficking and has directed the National Technical Committee on Trafficking in Persons, under the direction of the Ministry of Home Affairs and in partnership with all relevant stakeholders, to develop a national counter-trafficking policy and recommendations for a comprehensive trafficking Bill.

Towards this end, the National Technical Committee has initiated a project to assess and strengthen the legal and policy framework available in Zambia to combat trafficking. The purpose of the project is to increase the government’s legal and institutional capacity to combat human trafficking and protect the human rights of trafficked persons. The National Technical Committee starts from the premise that an effective strategy requires a multi-dimensional, multi-sectoral response organized around the “3 P’s” of counter-trafficking: Prevention, Protection, and Prosecution. It recognizes that Zambia’s response should be consistent with its international obligations and recognized human rights standards. However, care must also be taken to ensure that the recommended approach is realistic and effective in the specific Zambian context.

In October 2006, the Ministry of Home Affairs and the Zambian Law Development Commission will be hosting a series of consultation workshops to provide stakeholders from government, international organizations and civil society with the opportunity to provide input into the development of a national counter-trafficking policy and a Human Trafficking Bill. Stakeholders may also make written submissions. Following the completion of the consultation workshops, the team will prepare a draft policy framework and proposed legislation for public review and comment.

PURPOSE AND STRUCTURE OF ISSUE PAPER

The purpose of this document is to provide stakeholders with sufficient information to enable them to participate fully in the consultative process and to prepare focused submissions to the legislative and policy team on key issues of interest and concern.

This Issue Paper is organized in three parts. Part I provides background information on human trafficking and the international legal framework governing trafficking in human beings. Part II provides an overview of anti-trafficking laws in the SADC region and an analysis of the domestic legal framework available to combat human trafficking in Zambia.¹ These should be reviewed as background to the consultation workshops.

Part III is organized around the three main elements of an effective counter-trafficking strategy: prevention of trafficking, prosecution of traffickers, protection and assistance to trafficked persons. Key legal and policy considerations are raised under each subheading, along with specific questions for consideration, discussion, and debate. During the consultation workshops, participants will have the opportunity to provide inputs with respect to each of the three components, as well as cross-cutting themes such as coordination and training. In preparation for the workshop and/or for written submissions, participants are requested to focus particularly on those issues and questions relating to their area of expertise and/or the mandate of the agency/organization they represent.

¹ The Zambian Law Development Commission wishes to thank the International Organization for Migration (IOM) Southern Africa Counter-Trafficking Assistance Programme (SACTAP) for allowing us to reproduce sections of the IOM report, J. Thompson and M. Miti, "[Draft] Assessment of Laws and Policies to Combat Trafficking in the SADC Region," unpublished report (IOM 2006) and IOM training handbook "Human Trafficking in Southern Africa: Resource Materials for Legal Professionals and Lawmakers," (IOM, 2005) in the background sections of this Issue Paper.

PART I: BACKGROUND ON HUMAN TRAFFICKING

1. WHAT IS HUMAN TRAFFICKING?²

Human trafficking is a complex global phenomenon involving the intentional movement of people for the purpose of exploitation. One of the most common forms is the trafficking of women and children for the purpose of sexual exploitation and/or prostitution. Trafficking occurs when a woman or child is recruited, sold, or taken from one country, region, or community to another in order to exploit him or her for sexual purposes. In Southern Africa, women and children (both boys and girls) are being trafficked for use in prostitution and/or pornography, or are being sold or procured for personal use as “wives” or “sex slaves.” There are also many forms of human trafficking that do not necessarily involve sexual exploitation. In the SADC region, many people, including and in some cases primarily children, are being trafficked either within their own country or across state borders for domestic work, farm labor, construction, mining, or other types of work.

The difficulty of combating trafficking is increased by the involvement of highly organized criminal syndicates, who make huge profits from the exploitation of others. IOM estimates that organized criminals earn up to \$12 billion annually from human trafficking. This makes human trafficking second only to drug trafficking in terms of profitability for organized crime. On the trans-national level, trafficking in people is often perpetrated by the same criminal groups that engage in such crimes as drug trafficking, document fraud, migrant smuggling and money laundering. Trafficking is also facilitated by corruption at all levels of the state, especially amongst law enforcement and immigration authorities.

In Zambia, most cross-border trafficking appears to involve trafficking in young women and children for sexual exploitation. Zambia is both a country of origin for trafficking as well as a transit point for trafficking from other parts of Africa to South Africa, Europe and Asia. To a lesser degree, Zambia is also a “destination” or “receiving” country for trafficked persons, recruiting children from neighboring countries such as Malawi to work on Zambian farms.

² The information in this section is drawn primarily from training materials and a draft report produced for the International Organization for Migration (IOM) Southern Africa Counter-Trafficking Assistance Programme (SACTAP): J. Thompson, “Human Trafficking in Southern Africa: Resource Materials for Legal Professionals and Lawmakers,” (IOM, 2005); J. Thompson and M. Miti, “[Draft] Assessment of Laws and Policies to Combat Trafficking in the SADC Region,” (IOM 2006); “Counter-Trafficking Handbook for Law Enforcement Officers in Southern Africa.”

Internal forms of trafficking also appear to be rife in Zambia. Although not widely recognized as “trafficking,” children and young women are regularly recruited from poor, rural areas to work in urban areas, often through promises of legitimate work, schooling, or a “better life.” Many end up exploited and abused in various forms of sexual exploitation or exploitative domestic labor, sometimes by acquaintances or members of their own extended family.

1.1 THE INTERNATIONAL DEFINITION

The only internationally recognized definition of human trafficking is contained in Article 3 of the United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons (“Trafficking Protocol”), supplementing the United Nations Convention against Transnational Organized Crime (CTOC). According to the Trafficking Protocol, trafficking in persons means:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

1.2 STAGES OF HUMAN TRAFFICKING

One way to understand Human Trafficking is to think of it not as a single act, but as a process, involving three key elements or stages. These include:

- Recruitment (by various means, in the home region or country of origin)
- Transportation (within or across borders to another region or country)
- Exploitation (in the country or area of destination)

1.2.1 Recruitment

The first stage of trafficking involves the recruitment of a person in the community or country where they live. “Recruitment” usually involves convincing or persuading a person to do something – as in recruiting someone for a job -- but for trafficking purposes, can also include other methods of obtaining or securing a person (i.e. by abduction, sale, or adoption). Recruitment practices vary, but invariably involve some form of coercion or deception. In a typical trafficking case, the process begins with a trafficker convincing an unsuspecting person to leave his or her community or country of origin for work, marriage, or other opportunities in another region or country, without providing truthful or complete information about the nature of the work or the situation the person will encounter at the intended destination. Through deception, the person is led to believe that he or she will earn good money in a good job, or gain access to opportunities he or she does not have at home (i.e. through marriage, adoption or “placement” with another family.) She may also be “sent for” by a spouse or relative in another town or country, not knowing that the relative, in this case, intends to abuse or exploit her.

Deception in trafficking cases may be complete or partial. In some cases victims are tricked completely into believing there is a legitimate job or opportunity for them, only to be forced into prostitution or servitude when they arrive. In other cases, the person knows what he or she will be doing, but is deceived about its nature or conditions (i.e., how much he or she will earn, the number of hours, freedom of movement, choice regarding clients, etc.). Trafficking may also start out as an apparent smuggling arrangement – where a person pays or promises payment to another to help him migrate illegally to another country. The situation changes when the victim is unsuspectingly “sold” on arrival, detained, or forced to provide labor or services to the trafficker through intimidation or debt bondage.

Although most recruitment is obtained by deception, the term “recruitment” includes other means of obtaining victims, such as kidnapping, abduction, or sale. Recruitment could also include the transfer of a person (child or adult) to another in exchange for payment or other consideration, such as payment of a debt.

Traffickers tend to target people who are socially and economically vulnerable, especially women and children. However, it is clear that almost anyone can become a victim of trafficking, including men. Any person can also be a “trafficker.” Traffickers can be male or female, known or unknown to the victim. In Southern Africa and elsewhere, many of the agents used to recruit victims are acquaintances, boyfriends or relatives. A person may also be recruited through a seemingly legitimate business or organization, such as an employment agency, that (knowingly or unknowingly) facilitates the trafficking of that person.

1.2.2 Transportation

The second stage of trafficking is transportation. Human trafficking almost always involves facilitated movement of some kind, whether it is across international borders or within the same country to another region or community. In the case of transnational trafficking, traffickers transport the victim across one or more international borders and through various “countries of transit.” This may take several days to several months, and may involve tremendous hardship. Entry into the transit or destination country may be legal or illegal. Some victims are able to enter legally on student, tourist, or temporary work visas and then overstay or work illegally. Others are provided with false or altered travel documents or are smuggled across land borders without documentation. Victims may be intimidated, abused or exploited by the trafficker (or others, including police and immigration officials) during the transit process, before he or she even arrives at the intended country of destination. Corruption also plays a key role at this stage.

In Southern Africa, internal forms of trafficking may be more prevalent than cross-border trafficking. Typically, men, women and children migrate from rural areas to urban areas to find work or a better life. Not all migration is trafficking, but there are many known cases where traffickers or their agents have actively recruited people from rural villages in order to exploit their labor or services far from home. As in cross-border cases, transportation increases the vulnerability of the person to exploitation by increasing his or her isolation and indebtedness to the trafficker.

1.2.3 Exploitation

The ultimate aim of human trafficking is the exploitation of the victim for financial or personal gain. The most common form of trafficking worldwide is for the purpose of prostitution or other forms of sexual exploitation in the commercial sex industry (such as pornography, massage and striptease). These activities are underground, relatively easy to hide, and generate huge profits for traffickers. However, trafficking in persons is not limited to commercial sex or to women and girls. A trafficked person may be trafficked for a wide variety of reasons including forced labor or servitude, forced or fictitious marriage, and non-commercial sexual exploitation. In Southern Africa, people are trafficked most often for prostitution, domestic work, agricultural or other manual labor, or to be sold as “wives.” There have also been unconfirmed reports of people being trafficked for organs or body parts, either for transplant or use in traditional medicine or “muti.”

Many traffickers exploit their victims in extremely abusive conditions bordering on slavery. Victims may be raped, beaten, threatened, confined, and/or deprived of food unless they agree to the trafficker’s demands. They may be forced to work long hours under hazardous conditions, with little or no pay, and have no power to negotiate their conditions of “employment.” Traffickers often confiscate their victims’ identity or travel documents, restrict their movement, and use debt bondage or other forms of psychological and financial coercion to exert control over the victim and prevent them from escaping. These methods are extremely effective: most victims feel trapped and powerless, and unable to change or escape their situation.

Under the Trafficking Protocol, “exploitation” is defined to include, *at minimum*:

“the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”

The Protocol itself does not define these terms. However some are defined in other international conventions, to which Zambia is a party. For example:

- “Forced labour” is defined in article 2.1 of the ILO Convention Concerning Forced Labour as follows: “... all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”
- “Slavery” is defined in article 1.1 of the UN Slavery Convention as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”
- “Practices similar to slavery” are contained in article 1 of the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. These include:
 - “(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person

under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

- “(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- “(c) Any institution or practice whereby:
 - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
- “(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

“Servitude” is not defined in international law but it is understood that the above practices are forms of servitude. The Supplementary Convention lists specific instances of servitude or practices similar to slavery. Other forms of servitude can be drawn from the principles evident in the Supplementary Convention, such as the use of customary practices to strip a person of any ability to refuse to submit to practices that otherwise would be considered slavery or forced labor.³ Generally, servitude suggests a condition of dependency in which the labor or services of a person are obtained by coercive means or in which a person is completely subject to someone more powerful, for any purpose, including domestic or sexual servitude.

“Sexual exploitation” and “exploitation of the prostitution of others” are also not internationally defined, allowing States some latitude in defining these terms.

South Africa, for example, has proposed the following definition for use in its Trafficking In Persons Bill: “Sexual exploitation” means:

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

1.3 “TRAFFICKING IN PERSONS” VERSUS “MIGRANT SMUGGLING”

³ A. Jordan, The Annotated Guide to the Complete UN Trafficking Protocol, annotation to Article 3(a).

The terms “trafficking” and “smuggling” are often used interchangeably, but they mean different things under international law.⁴ “Migrant Smuggling” is an activity in which people pay money to individuals or organized groups to help them enter a country illegally or through irregular means, usually to find work or to claim asylum. The smuggling of human beings takes place with the consent of the travelers and the relationship between the parties generally ends when the person reaches his or her intended destination. In contrast, the trafficked person is recruited and transported from his or her place of origin to another region or country in order to exploit that person’s labor or services. In this relationship, the trafficked person is controlled and exploited, and may even be sold to other traffickers who continue the exploitation.

Although a trafficked person may also be assisted by his or her trafficker to cross borders illegally, the critical factor that makes trafficking different from smuggling is that trafficking is done for the purpose of exploitation and includes force, coercion and/or deception at one of more stages of the process.⁵

1.4 TRAFFICKING VS. EXPLOITATIVE LABOR

Exploitation is a key element of human trafficking, but not all exploited workers have been trafficked. Labor exploitation occurs anytime a person benefits unjustly or illegally from the work or services of another person. This includes paying a person less than he or she is entitled to by law or by agreement, or subjecting a person to unfair or illegal conditions of work. Exploitation in the case of a trafficked person is usually severe, amounting to forced labor, servitude or worst forms of child labor. Moreover, it is usually extracted through some form of coercion or abuse of power. Trafficking is also distinguished by the existence of two other key factors: recruitment and transportation of the person from one country or community to another.

1.5 HUMAN TRAFFICKING AND HUMAN RIGHTS

Despite its implications for border security and law enforcement, trafficking in human beings is first and foremost a human rights problem. Traffickers subject their victims to a wide range of human rights abuses, including: physical and sexual violence, restricted freedom of movement, confiscating or withholding wages, etc. These practices violate numerous fundamental rights recognized by international law and the Constitution of Zambia:

- The right to liberty and security of person
- The right to be free from physical violence and inhuman or degrading treatment
- The right not to be subjected to slavery, forced labor or servitude, and
- The right to just, fair and safe work conditions

⁴ The Protocol against the Smuggling of Migrants by Land, Sea and Air (2004) defines “smuggling of migrants” as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State [...] of which the person is not a national or permanent resident.”

⁵ See, IOM Counter Trafficking Handbook for Law Enforcement Officers in Southern Africa.

States have a duty under international law to prevent violations of human rights, to investigate and prosecute violators, and to afford remedies and reparation to those who have been injured as a consequence of such violations. States fail to protect the human rights of trafficked persons by not enacting or enforcing laws to protect them from trafficking. Post-trafficking, States often do further harm by arresting, detaining and punishing the victims, deporting them back into the hands of traffickers, failing to provide adequate care or protection, and/or failing to provide access to redress and compensation through the justice system. Many governments, in fact, “re-victimize” victims of trafficking instead of providing effective assistance and protection.

Adopting a human rights approach to trafficking requires States to integrate and prioritize human rights concerns and strategies in the fight against human trafficking and the development of laws and policies to address trafficking. In practice this means prioritizing the protection of the human rights of trafficked persons, taking the steps necessary to prevent abuses, and providing remedies where abuses occur. Recognizing and prioritizing human rights is also an essential element of an effective counter-trafficking strategy. Practice shows that States that protect the rights of trafficked persons are more likely to have successful prosecutions. This is because victims whose rights are protected and lives safeguarded are more willing to become witnesses and/or cooperate in criminal investigations.

2. THE INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

A strong international normative framework has been shaped over recent years to address the problem of human trafficking. The most important international agreement relating to trafficking in human beings is the recently adopted Trafficking Protocol (2003). Other key instruments include the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000), the ILO Convention number 182 on the prohibition and immediate action for the elimination of the worst forms of child labor (1999), the Slavery Convention (1926), and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). These, together with other relevant instruments, create a strong obligation on the part of States to “suppress the traffic in women and the exploitation of the prostitution of women” (CEDAW), “protect children from economic exploitation and all forms of sexual exploitation and abuse” (CRC), “suppress the use of forced labour” (ILO 29) and abolish slavery “in all its forms.”

Southern Africa does not yet have a regional agreement specifically aimed at combating human trafficking,⁶ although other instruments, such as the African Charter on Human and Peoples Rights, The African Charter on the Rights and Welfare of the Child, and the Charter of Fundamental Social Rights in SADC (2003) contain many relevant provisions. Especially noteworthy is the African Charter on the Rights and Welfare of the Child. This agreement defines a child as any person under 18, and among other things, calls on States to take appropriate legislative, administrative, social and educational measures to:

⁶ For an example of a regional agreement relating to trafficking from another region, see, e.g., The Economic Community of West African States (ECOWAS) “Declaration and Plan of Action against Trafficking in Persons,” (2002-2003).

- Prevent the abduction, sale or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child (Art 29)
- Protect children from all forms of economic exploitation and from performing any kind of hazardous work in both the formal and informal sectors of employment (Art 15)
- Protect children from all forms of inhuman or degrading treatment, maltreatment, sexual, physical and mental abuse (Art 16).

The Charter of Fundamental Social Rights in SADC requires States to protect the right of all workers, including migrant workers, to safe and fair labor conditions, and to protect them against violations of their human rights, regardless of their nationality or immigration status.

International law also creates special obligations to protect and provide services to children, including non-citizens and illegal foreigners. These include health services and education. Under the Convention on the Rights of the Child, states are obligated to take the special needs of children into account and to always act in the best interest of the child.

2.1 THE UN TRAFFICKING PROTOCOL

The Trafficking Protocol is the principal document outlining States obligations with respect to human trafficking. Zambia acceded to this Protocol on April 24, 2005.

Although limited in application to transnational forms of human trafficking, the Protocol contains many relevant provisions for internal forms of trafficking as well.

Article 5: States must establish trafficking as a criminal offence

- All conduct defined by Article 3, where “committed intentionally”
- Attempt to commit the crime of trafficking
- Participating as an accomplice to human trafficking, and
- Organizing or directing others to commit the offence as defined above.

Article 6: States must protect and assist victims, with full respect for their internationally recognized human rights and taking into account age, gender and special needs, especially the needs of children. Measures include:

- protecting the privacy and identity of victims, including in legal proceedings to the extent possible under domestic law (required)
- enacting measures to provide victims with information on relevant court and administrative proceedings (required)

- providing victims with assistance to express their views and concerns at appropriate stages in criminal proceedings against offenders (i.e. bail hearings, trial, sentencing) (required)
- measures to provide for the physical, psychological and social recovery of victims, including housing, legal counseling and information in a language they understand, medical, psycho-social and material assistance, and employment, educational and training opportunities (recommended)
- measures to protect the physical safety of victims within the State's territory (required)
- a legal mechanism to allow victims to seek compensation for damages suffered

Article 7: States should consider adopting measures to permit [foreign] victims to remain in its territory (temporarily or permanently) in appropriate cases, giving appropriate consideration to humanitarian and compassionate factors.

Article 8: States shall assist in the repatriation of trafficked persons

- Countries of origin shall facilitate and accept the return of victims without undue or unreasonable delay, and with due regard for the safety of the victim. This includes verifying nationality and issuing travel documents or other necessary authorization to travel
- Returns between parties to the Protocol shall take into account the safety of the person and the status of legal proceedings, and shall be voluntary, wherever possible.

Article 9: States shall establish comprehensive policies to prevent and combat trafficking in persons and protect victims from "re-victimization." Measures should include:

- Research and data collection
- Public information campaigns
- Initiatives to address root causes of trafficking (such as inequality, poverty and unemployment)
- Legislative or other measures to discourage demand
- Rehabilitation and reintegration

Article 10: International cooperation, information exchange and training

- Law enforcement, immigration and other relevant authorities shall cooperate with one another through exchange of information on traffickers' routes, methods, identities, etc., and the involvement of organized criminal groups
- States shall provide training for law enforcement, immigration and other officials on human trafficking (including prevention and protection), and encourage cooperation between government and non-governmental organizations/civil society.

Articles 11 and 12: These sections require States to strengthen border controls and the security and control of travel documents. Several of the measures are similar to those contained in Migrant Smuggling Protocol.⁷ Both require States to:

- strengthen border controls as may be necessary to prevent and detect trafficking in persons;
- establish the obligation of commercial carriers to ascertain that all passengers are in possession of travel documents required for entry into the receiving State; and
- ensure travel or identity documents are of such quality that they cannot easily be misused, readily falsified, unlawfully altered, replicated or issued.

2.2 THE CONVENTION ON TRANSNATIONAL ORGANIZED CRIME (CTOC)⁸

The Trafficking Protocol and Migrant Smuggling Protocol supplement the CTOC and must be read in conjunction with that convention. The fact that the Trafficking Protocol is attached to the CTOC underscores the reality that much of human trafficking is perpetrated – both globally, and in Southern Africa — by organized criminal groups. Many of these groups operate trans-nationally and make huge profits out of the exploitation of human beings. They also use sophisticated mechanisms to launder the proceeds of their criminal activities.

⁷ Articles 11 – 13, the Smuggling Protocol

⁸ UN Convention of 28 January 2004

The CTOC requires States to take appropriate measures to combat organized crime, (and thereby strengthen the fight against human trafficking.) These include:

- Criminalizing organized crime (“participation in organized criminal group”) as well as “organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized group” (Art. 5)
- Criminalizing money laundering of proceeds of crime (Art. 6)
- Establishing regulatory and monitoring mechanisms to combat money laundering (Art. 7)
- Criminalizing corruption by public officials (Art 8)
- Enacting measures to prevent, deter and punish corruption by public officials (Art.9)
- Adopting measures to enable confiscation of the proceeds of crime (asset forfeiture) (Art. 12)
- Strengthening extradition and mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by the Convention (and supplementary protocols).

The CTOC (Articles 24 and 25) also contains several important victim protection measures. These include obligations to:

- Protect witnesses (and their families) from retaliation and intimidation
- Establish witness protection procedures and programs
- Take “appropriate measures within its means to provide assistance and protection” to victims of offences covered by the Convention
- Enable the views and concerns of victims to be expressed and considered in criminal proceedings against offenders
- Establish procedures to enable victims to seek compensation and restitution

All offences established by the Trafficking Protocol are regarded as offences under the Convention for purposes of witness protection, victim assistance, extradition and asset forfeiture. Consequently, States may be held to the higher standard of victim care established by the Convention with respect to victim assistance, compensation and participation in criminal proceedings in transnational trafficking cases.

2.3 THE SMUGGLING PROTOCOL

Also supplementing the CTOC, Article 6 of the Protocol against the Smuggling of Migrants by Land, Sea and Air requires States to establish as criminal offences:

- smuggling of migrants, attempted smuggling, participating as an accomplice to the smuggling of migrants and organizing or directing other persons to commit the offence of smuggling.
- the producing of a fraudulent travel or identity document
- procuring, providing or possessing such a document when committed for the purpose of enabling the smuggling of migrants, as well as
- enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State.

The Smuggling Protocol also establishes the principle that “migrants shall not become liable to criminal prosecution for the fact of having been the object of [smuggling and its related offences]. (Art. 5)

These provisions are relevant to trafficking since so many cross-border trafficking cases also involve facilitated illegal exit, entry or stay.

2.4 STATUS OF RATIFICATION IN THE SADC REGION

Most of the countries in Southern Africa have signed the CTOC, Trafficking Protocol, and Migrant Smuggling Protocol, and many have already ratified one or more of these instruments. Zambia has acceded to all three. The table below summarizes the current status of these instruments in the SADC region.

COUNTRY	DATE OF RATIFICATION		
	United Nations Convention against Transnational organized Crime	The Protocol to Prevent, Suppress and Punish Trafficking in Persons	The Protocol against the Smuggling of Migrants by Land, Sea and Air
ANGOLA	SIGNED	-	-
BOTSWANA	29/08/2002	29/08/2002	29/08/2002
DRC	-	-	-
LESOTHO	24/09/2003	24/09/2003	24/09/2004
MALAWI	17/03/2005	17/03/2005	17/03/2005
MOZAMBIQUE	SIGNED	SIGNED	SIGNED
NAMIBIA	16/08/2003	16/08/2003	16/08/2003
SOUTH AFRICA	20/02/2004	20/02/2004	20/02/2004
SWAZILAND	SIGNED	SIGNED	SIGNED
TANZANIA	SIGNED	?	?
ZAMBIA	24/04/2005	24/04/2005	24/04/2005
ZIMBABWE	05/2006	05/2006	05/2006

PART II: ANALYSIS OF DOMESTIC LAWS AVAILABLE TO COMBAT HUMAN TRAFFICKING AT THE NATIONAL AND REGIONAL LEVEL⁹

In 2005-2006, the IOM conducted a review of the legal and policy framework available to combat human trafficking in six countries in the SADC region. The countries included in the study were Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe. The study found the following:

1. OVERVIEW OF COUNTER-TRAFFICKING LAWS IN THE SADC REGION

1.1 COMPREHENSIVE ANTI-TRAFFICKING LEGISLATION

None of the countries in Southern Africa currently have in place a comprehensive legal framework or strategy to address the problem of trafficking. However, some are various stages of developing one:

SOUTH AFRICA

The South Africa Law Commission is currently engaged in a process of developing comprehensive draft legislation on human trafficking consistent with the UN Trafficking Protocol. In June 2006, the Law Commission distributed a discussion paper and draft legislation for public comment. The proposals will likely undergo additional revisions based on wide public consultation before the Commission's recommendations are finalized and a draft bill submitted to Cabinet for tabling in Parliament. In 2006, the South African Parliament also enacted the first part of a new Children's Act containing a chapter on child trafficking (discussed below). The Chapter contains several criminal offences relating to child trafficking as well as some important provisions relating to the care and protection of trafficked children. Implementation of the Act has been delayed pending enactment of the second half of the Children's Act. South Africa has also formed an inter-sectoral task team on human trafficking under the leadership of the National Prosecuting Authority Sexual Offences and Community Affairs Unit (SOCA), and has taken preliminary steps to

⁹ Part II is excerpted from the IOM report, J. Thompson and M.Miti, [Draft] Assessment of Laws and Policies to Combat Trafficking in the SADC Region," unpublished report (IOM 2006).

develop a national plan of action. The committee includes representatives from civil society in addition to members of government.

ZAMBIA

In 2004, Zambia formed an inter-agency task force to address the problem of human trafficking, the National Committee on Trafficking in Persons. The task force Subcommittee on Legislation is currently working with the Zambian Law Development Commission (ZLDC) to develop a counter-trafficking policy framework and comprehensive trafficking bill. In 2005, the Parliament passed amendments to the Penal Code containing a distinct offence of human trafficking.

MALAWI

The Law Commission of Malawi has also initiated a process to develop anti-trafficking legislation and is taking a leading role in facilitating research and training around human trafficking. The Law Commission is currently preparing an issue paper and plans to convene a committee to draft legislation in early 2007.

MOZAMBIQUE

The Ministry of Justice has reportedly begun the process of domesticating the provisions of the CTOC and its optional protocols. This includes the development of an anti-trafficking provision in the criminal law.

1.2 RELATED LAWS, PROGRAMS AND POLICIES

Although not specifically aimed at human trafficking, several countries in the region have also made significant efforts, either legislatively or at a policy and grassroots level, to address issues related to trafficking such as child labor, child protection and/or child sexual abuse, HIV-Aids, and orphans and vulnerable children. While not anti-trafficking strategies, per se, these efforts have contributed to the strengthening of relevant legislation and created policy and response mechanisms that may be helpful to combat human trafficking, particularly in terms of prevention and protection of victims.¹⁰

A number of other countries have also enacted (or are in the process of enacting) legislation to address organized crime (South Africa, Zimbabwe), money laundering (South Africa, Zambia) and/or public corruption (Mozambique, South Africa, Zambia, Zimbabwe).

1.3 CRIMINALIZATION OF HUMAN TRAFFICKING

1.3.1 Distinct Offence

The criminal law in most of Southern Africa does not include the distinct offence of trafficking in human beings. As a result, “trafficking” is prosecuted under other existing laws (such as immigration or prostitution laws) or not prosecuted at all. Many of the available laws only penalize “trafficking” into prostitution, leaving out other

¹⁰ In at least one case, a community-based mechanism aimed at identifying vulnerable children was instrumental in detecting a potential trafficking situation. Members of the community “child protection committee” identified a suspicious situation and alerted police. The trafficker was arrested and prosecuted for attempting to smuggle children over the border for farm labour.

areas of work or activities where persons are held in forced labor, slavery or servitude. This means that persons trafficked into forced domestic labor or agricultural labor, or for the purpose of providing other sexual services (commercial or non-commercial) are not adequately protected and their traffickers operate with impunity.

South Africa is the only country in the region to enact a distinct offence of trafficking based on the definition and requirements of the Trafficking Protocol.¹¹ However, it is limited to trafficking in children. Consistent with Article 3 of the Protocol, the offence of child trafficking is not limited to trafficking for sexual exploitation and covers boys as well as girls. Trafficking for purposes of child labor exploitation is specifically included in the definition of the offence. Moreover, the offence encompasses internal forms of trafficking (trafficking of South African children for exploitation within South Africa) as well as cross-border or transnational trafficking. At this stage, the Children's Act has not been implemented, and it is not possible to say how well the new law will work in practice. However, most stakeholders in South Africa have welcomed the provision and hope it will provide a powerful new tool for law enforcement. In addition to creating a distinct criminal offence, the Children's Act also includes provisions to assist and protect child victims of trafficking. These include bringing trafficked children (whether South African or illegal foreigners) under the protection and oversight of the Department of Social Welfare and the Children's Court, as well as measures to provide short and longer-term shelter, education and repatriation assistance (available to all children determined to be "in need of care and protection.")

The text of the child trafficking law is as follows:

Trafficking in children prohibited

284. (1) No person, natural or juristic, or a partnership may traffic a child or allow a child to be trafficked.

(2) It is no defense to a charge of contravening subsection (1) that—

(a) a child who is a victim of trafficking or a person having control over that child has consented to—

(i) the intended exploitation; or

(ii) the adoption of the child facilitated or secured through illegal means; or

(b) the intended exploitation or adoption of a child referred to in paragraph (a) did not occur.

(3) In order to establish the liability, in terms of subsection (1), of an employer or principal, the conduct of an employee or agent of or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person is acting—

(a) within the scope of his or her employment;

(b) within the scope of his or her actual or apparent authority; or

(c) with the express or implied consent of a director, member or partner of the employer or principal.

(4) A finding by a court that an employer or principal has contravened subsection (1) serves as a ground for revoking the license or registration of the employer or principal to operate.

¹¹ Children's Act, 2006, sections 284-285.

Behaviour facilitating trafficking in children prohibited

- 285.** (1) No person, natural or juristic, or a partnership, may—
- (a) knowingly lease or sublease or allow any room, house, building or establishment to be used for the purpose of harbouring a child who is a victim of trafficking.
 - (b) advertise, publish, print, broadcast, distribute or cause the advertisement, publication, printing, broadcast or distribution of information that suggests or alludes to trafficking by any means, including the use of the Internet or other information technology.
- (2) Every Internet service provider operating in the Republic must report to the South African Police Service any site on its server that contains information in contravention of subsection (1).

Assistance to child who is a victim of trafficking

- 286.** (1) With due regard to the safety of a child and without delay—
- (a) the Director-General: Foreign Affairs must facilitate the return to the Republic of a child who is a citizen or permanent resident of the Republic and who is a victim of trafficking; and
 - (b) the Director-General: Home Affairs must—
 - (i) facilitate and accept the return of a child contemplated in paragraph (a);
 - (ii) issue such travel documents or other authorisations as may be necessary to enable such a child to travel to and enter the Republic;
 - (iii) at the request of another state that is a party to the UN Protocol to Prevent Trafficking in Persons or to an agreement relating to trafficking in children, verify that the child who is a victim of trafficking is a citizen or permanent resident of the Republic; and
 - (iv) upon the child's entry into the Republic refer the child to a designated social worker for investigation in terms of section 155(2).
- (2) (a) If it is essential in the best interests of a child who has been trafficked, the Director-General must authorise an adult at state expense to escort the child from the place where the child was found to the place from which the child was trafficked.
- (b) The Director-General may not act in terms of paragraph (a) unless he or she is satisfied that the parent, guardian, care-giver or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back.

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

- 287.** If a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may—
- (a) suspend all parental responsibilities and rights of that parent, guardian, or other person; and
 - (b) place that child in temporary safe care, pending an inquiry by a children's court.

Reporting of child who is a victim of trafficking

288. An immigration official, police official, social worker, social service professional, medical practitioner or registered nurse who comes into contact with a child who is a victim of trafficking in the Republic must refer that child to a designated social worker for investigation in terms of section 288(1).

Child who is a victim of trafficking found in Republic

288. (1) A child who is a victim of trafficking—

(a) must be referred to a designated social worker for investigation in terms of section 155(2); and

(b) may, pending such investigation, be placed in temporary safe care.

(2) If, after an investigation contemplated in subsection (1), an illegal foreign child is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act, 1998 (Act No. 130 of 1998).

(3) A finding in terms of section 156 that an illegal foreign child who is a victim of trafficking is a child in need of care and protection serves as authorisation for allowing the child to remain in the Republic for the duration of the children's court order.

Repatriation of child who is a victim of trafficking

290. (1) The Director-General may not return a child contemplated in section 288(2) to his or her country of origin or the country from where the child has been trafficked without giving due consideration to—

(a) the availability of care arrangements in the country to which the child is to be returned;

(b) the safety of the child in the country to which the child is to be returned; and

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

(2) (a) If it is essential in the best interests of a child who has been trafficked, the Director-General must authorise an adult at state expense to escort the child from the place where the child was found to the place from which the child was trafficked.

(b) The Director-General may not act in terms of paragraph (a) unless he or she is satisfied that the parent, guardian, care-giver or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back.

Extra-territorial jurisdiction

291. A citizen or permanent resident of the Republic, a juristic person or a partnership registered in terms of any law in the Republic that commits an act outside the Republic which would have constituted an offence in terms of this Chapter had it been committed inside the Republic, is guilty of that offence as if the offence had been committed in the Republic and is liable on conviction to the penalty prescribed for that offence.

“**trafficking,**” in relation to a child—

(a) means the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic—

- (i) by any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or
 - (ii) due to a position of vulnerability, for the purpose of exploitation; and
- (b) includes the adoption of a child facilitated or secured through illegal means;

“**exploitation**,” in relation to a child, includes—

- (a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage;
- (b) sexual exploitation;
- (c) servitude;
- (d) forced labour or services;
- (e) child labour prohibited in terms of section 141; and
- (f) the removal of body parts;

“**temporary safe care**,” in relation to a child, means care of a child in an approved child and youth care centre, shelter or private home or any other place of a kind that may be prescribed, where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes care of a child in a prison or police cell;

“**removal of body parts**” means the removal of any organ or other body part from a living person in contravention of the National Health Act, 2003 (Act No. 61 of 2003);

“**commercial sexual exploitation**,” in relation to a child, means—

- (a) the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or care-giver of the child, or any other person; or
- (b) trafficking in a child for use in sexual activities, including prostitution or pornography;

“**child labour**” means work by a child which—

- (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and
- (b) places at risk the child’s well-being, education, physical or mental health, or spiritual, moral, emotional or social development;

Aside from South Africa, Zambia and Tanzania are the only SADC countries that have a distinct offence described as “trafficking” in their respective criminal law. Neither of these is based on the international definition of trafficking, however; nor do they meet the minimum requirements of the Trafficking Protocol for criminalization of human trafficking. Zambia’s Penal Code (Amendment) Act, 2005, section 143, makes it a crime “to sell or traffick in a child or other person for any purpose or in any form...” The term trafficking is not defined. The penalty for the crime is a term of imprisonment of not less than twenty years, with higher sentences available for certain forms of sex trafficking. Tanzania’s trafficking law is contained in the Sexual

Offences Special Provisions Act, 1998, Sect 139A. Although called an anti-trafficking law, section 139A is primarily directed at illegal adoptions. Section 139A prohibits the “buying, selling or bartering” a person for money or any other consideration. It also prohibits certain specific acts that “promote, facilitate or induce the buying, selling or bartering or placement in adoption of any person for money or any other consideration.” These acts all relate to acquiring children for illicit adoption. The penalty for trafficking under the statute is quite high – a minimum sentence of 20 years imprisonment and a fine, with mandatory compensation to the victim. The limitation of the statute is its definition, which is vague and too narrow in scope to clearly reach all forms of human trafficking. It has also never been tested in practice.

1.3.2 Other Existing Laws to Combat Trafficking

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

- Penal Code (or common law)
- Labor/Employment Law
- Immigration Law
- Child Protection Laws
- Special Sexual Offences legislation
- Anti-corruption Law
- Organized Crime/Money Laundering Law
- Local by-laws (i.e. regulating entertainment or hospitality establishments)

Most of these measures were not designed with trafficking in mind and have obvious gaps and limitations, especially in cross-border cases or in cases involving labor, rather than sexual exploitation.

1.3.2.1 Sexual or morality offences

Several of the countries surveyed by IOM have laws that could be used to reach the procurement of women or children for cross-border prostitution or other forms of sexual exploitation, particularly Tanzania and Zimbabwe. For example:

Zimbabwe has several sexual offences that could be used to prosecute trafficking, particularly in cases involving children under the age of 16. These provisions – sexual crimes against young persons and “procuring” for prostitution or unlawful sexual conduct – have specific extra-territorial provisions built in that enable prosecutors to reach beyond Zimbabwe’s borders in many cases, as well as to prosecute internal forms of sex trafficking and “sex tourism.” (Criminal Code, Section 70, 71, 72, 83). Property owners or occupiers can be charged with complicity in

permitting the sexual exploitation of children under sections 76 and 86, and parents can be reached under section 87. These provisions carry a potentially high penalty (compared, for example, to countries where procurement is only a misdemeanor) of up to ten years imprisonment. The strength of these measures is that they are gender neutral (not limited to female victims), not limited to commercial forms of sexual exploitation or prostitution, and address both internal and cross-border forms of trafficking for sexual purposes. The limitation is that it might not cover procurement of adults for other forms of commercial sexual exploitation not involving sexual intercourse (including pornography, stripping, etc.) or any form of trafficking for labor exploitation, and procurement of adults (defined as anyone age 16 and over) is only a misdemeanor.

Tanzania has also enacted several amendments to the Penal Code (Sexual Offences Special Provisions Act, 1998) relating to sexual offences that could be useful in prosecutions of trafficking for sexual exploitation, including cross-border trafficking. In most cases, sexual offences have been made gender-neutral, penalties have been increased and corroboration requirements eliminated. Some promising provisions include:

Section 139 (b)(d) makes it an offence to “procure” a child (under 18) to leave Tanzania or to “remove or attempt to remove” the child from Tanzania, or to “bring or attempt to bring” the child into Tanzania, for the purpose of “prohibited sexual intercourse” (whether commercial or non-commercial).

Section 138A establishes the offence of sexual exploitation of children, which carries a minimum sentence of five years imprisonment (up to twenty years). Under this law, it is an offence to procure, threaten or induce any child (defined as a person under 18) to participate in any form of sexual activity, sexual abuse, indecent exhibition or show; as well as to take advantage of one’s position of influence over a child or to give any kind of consideration or benefit to a child or his parents in order to procure the child for any sexual purpose. This provision carries a strong penalty and covers a wide range of exploitative practices beyond prostitution or defilement.

Tanzania’s law also provides additional protections for complainants in sexual offence cases and makes compensation to the victim a mandatory component of sentencing in criminal cases.

Since IOM’s study, Zambia has enacted several amendments to the Penal Code aimed at strengthening prostitution and sexual offences. These amendments substantially increase the penalties for certain offences (such as procurement and detention in a brothel), make more offences gender-neutral, and create new offences such as child pornography and trafficking (discussed above). However, they still contain several weaknesses, including corroboration requirements. The amendments also define a child as a person under 16 rather than 18.

1.3.2.2 Labor laws

Most countries in the SADC region have laws regulating or prohibiting forced labor and child labor. In last several years, several countries in the region (including

Malawi, Tanzania, Zambia and Zimbabwe) have amended their employment/labor legislation to strengthen laws against child labor and to bring domestic law in line with international standards. In Zambia, it is a distinct offence to employ a child or young person in “worst forms of child labour.” Worst forms is defined according to ILO Convention 182, and includes trafficking, prostitution/pornography, slavery-like practices, and hazardous labor. However, “forced labor” is only a crime when it involves persons under 18. In Tanzania, it is a criminal offence not only to employ labor in violation of the child labor and forced labor law, but also to procure it. Labor law provisions may be useful in prosecuting internal trafficking for labor exploitation and may also be used to prosecute exploiters in “receiving” countries. However, they may be very difficult to use in cross-border cases because of limitations on extra-territorial jurisdiction. The scope of the laws may be too narrow in some cases to reach sexual exploitation of adults or children (as well as domestic work). Moreover, the penalties for violations across the region tend to be quite low and enforcement of the labor code inadequate.

1.3.2.2 Immigration laws

All countries in the region criminalize illegal entry and facilitating or aiding/abetting illegal entry of another. However, in some countries the penalties are so low that immigration offences are rarely prosecuted in practice. Offenders are more likely to be deported than face criminal charges. In addition, in several countries (Mozambique, Tanzania, Malawi) immigration codes are focused only on illegal entry and fail to criminalize illegal exit or facilitation of illegal exit. This gap creates a loophole for traffickers trying to smuggle victims out of a country, unless the trafficker can be charged with other offences such as making false statements, possessing forged documents, or similar offences. Exceptions are South Africa, Zambia and Zimbabwe, where it is also an offence to enter or exit illegally or to facilitate or convey others to enter or exit illegally. In Zimbabwe the penalty for this offence is up to 10 years imprisonment and possible forfeiture of the vehicle used in the crime. Zambian law also contains a forfeiture provision, although it has never been used in practice.

None of the countries in the region have enacted a distinct offence of “migrant smuggling” as that term is defined under international law. Nor are current laws adequate to reach traffickers intercepted in transit situations where the purpose of the trafficking is not known or easily provable. None of the countries in the region have enacted laws specifically to prohibit the illicit transfer of unaccompanied children across international borders or to increase penalties for immigration or other offences where children are involved.

1.3.2.3 Organized crime and money laundering

Most countries in the region have some form of anti-corruption offence in their criminal code or have enacted specific anti-corruption legislation that criminalizes corruption involving public officials. These are important tools for prosecutors as traffickers frequently rely on corruption to obtain travel documents or the cooperation of border or law-enforcement authorities. Cracking down on corrupt officials is also an essential element of a comprehensive counter-trafficking strategy.

South Africa is the only country surveyed that has enacted comprehensive legislation aimed at combating organized crime. The Prevention of Organized Crime Act (POCA) criminalizes a wide range of activities relating to the management of criminal enterprises, racketeering, money laundering, and “criminal gangs.” The Act also contains detailed asset forfeiture measures allowing seizure and confiscation of property derived from or used in the commission of scheduled offences, as well as the proceeds of “any unlawful act.” Although trafficking per se is not yet an offence covered by the statute, some related offences (operating a brothel, living off earnings of prostitution, kidnapping, fraud, assault) can be prosecuted under the statute’s provisions. Zambia and Zimbabwe have also enacted money laundering and/or asset forfeiture provisions that could provide a potentially useful tool in the fight against human trafficking. In Zimbabwe (and also in proposed legislation in Malawi) a person can be prosecuted for money laundering the proceeds of any would apply to any case involving a “serious crime,” defined by the statute as a crime for which the penalty exceeds twelve months imprisonment. In Zambia, a person may be prosecuted for money laundering the proceeds of any unlawful act.

1.3.2.4 Extra-territorial jurisdiction

Provisions relating to extra-territorial jurisdiction vary considerably across the region. Limitations on the application of criminal law to acts occurring outside the jurisdiction (extra-territoriality) may pose a challenge to prosecuting trans-national crimes in the region. Extra-territorial jurisdiction is particularly limited in South Africa and Mozambique, except where specifically provided by statute. Some countries impose extra-territorial jurisdiction on their own nationals or residents for certain crimes (i.e. drugs, poaching, customs offences) but not criminal offences generally. South Africa’s new child trafficking law contains a provision extending jurisdiction to citizens and permanent residents for trafficking offences committed outside the country. Zambia is the only country surveyed with a general extra-territorial provision allowing the State to prosecute its nationals (Zambian citizens only) for crimes committed outside the country that would be an offence if committed in Zambia.

Zimbabwe has recently enacted a new criminal code containing expanded extra-territorial provisions. These enable Zimbabwe, among other things, to reach some extra-territorial conspiracies, incitement, and accomplices, as well as certain forms of cross-border exploitation of children. However these are all aimed at cross-border crimes committed inside Zimbabwe and would not reach crimes against Zimbabweans committed in other countries. This would preclude, for example, prosecution of an extra-territorial conspiracy to traffic Zimbabweans to South Africa. Zambia, Malawi and Tanzania also extend jurisdiction to offences committed “partly within and partly beyond the jurisdiction.” The court can also reach any person within the jurisdiction who “conspires with another to commit any felony (or misdemeanor), or to do any act in any part of the world which if done in [the jurisdiction] would be a felony (or misdemeanor)” provided that the crime is also an offence under the laws of the place where it is done).

1.3.2.3. Summary of gaps in the legal framework to address human trafficking

An effective anti-trafficking strategy requires effective criminal laws to prosecute and punish traffickers. In the absence of a specific anti-trafficking law, most States in the

region have relied on existing immigration statutes relating to forged documents, or criminal provisions relating to prostitution or abduction to prosecute trafficking or trafficking-like crimes. A persistent problem, however, is the narrow reach and low penalties associated with these crimes. Moreover, none are adequate to address all manifestations of human trafficking or reach all of the actors in the trafficking chain.

There are also many significant gaps in the area of prevention and victim protection. For example:

- None of the countries in the region seem to have addressed the problem of false or fraudulent labor recruitment or other deceptive practices used by employment agents or agencies to recruit victims of trafficking. Most countries do not regulate or monitor the activities of employment recruiters (beyond the requirements for any business), even those engaged in recruitment for work overseas. Most general fraud statutes are not broad enough to cover employment recruitment, nor is fraudulent labor recruitment a specific crime in any country in the region. An exception is South Africa and Zimbabwe, whose fraud provisions (based on common law) are arguably broad to be used in a range of trafficking situations, not limited to recruitment agencies. However, monitoring and enforcement remain a significant problem.
- None of the countries in the region have adequately addressed the issue of residency status for victims of cross-border trafficking. None have enacted laws or regulations giving foreign victims of trafficking the right to remain temporarily in the country instead of being subject to immediate deportation, with the exception of South Africa's Children's Act, which applies to children only. In most countries, it appears that the possibility exists for a foreign victim of trafficking to remain temporarily in the country under certain conditions instead of being subject to immediate deportation. In South Africa, for example, an immigration officer can permit an "illegal foreigner" up to fourteen days to leave the country voluntarily before detaining that person (pending deportation) or charging them with a criminal offence. Home Affairs also appears to have discretion to authorize a temporary stay in exceptional cases. Other Immigration Acts in the region (Tanzania, Malawi, Zambia, Zimbabwe) also refer to temporary permits or special permits that allow prohibited immigrants to enter and/or stay in the country for a limited time. However, the process and criteria for receiving such a permit is not clear and there are currently no laws in place that specifically allow or require such a permit to be given to a victim of trafficking. It also appears that in some cases a substantial surety would have to be paid before a "prohibited immigrant" could be released from detention, even where that person had agreed to testify in court. At present, stays of deportation for victims of trafficking – if granted at all – are generally handled on an informal, ad hoc basis.
- With the exception of South Africa's Children's Act, none of the countries in the region have enacted legal provisions specifically aimed at assisting and protecting the human rights of victims of trafficking. Some have laws, procedures or institutions in place that could be applied to at least some victims of trafficking. These include, "victim friendly" court procedures for children and/or victims of sexual offences (Zimbabwe, Tanzania, South

Africa), special police or prosecutor units to deal with crimes against women and children (Mozambique, Zambia, Zimbabwe, South Africa), local child protection committees to identify and assist vulnerable children (Malawi, Zambia, Tanzania), and opportunities to receive compensation for certain offences through the criminal courts (Tanzania, Zimbabwe). NGOs throughout the region are also providing shelter and other services to people in need, particularly orphans and other vulnerable children. Major gaps throughout the region include: access to legal advice and/or representation, evidentiary rules requiring corroboration for sexual offences and allowing examination of victim's sexual history, lack of witness protection for victims, and limitations on compensation/restitution for victims of crime.

- Most of the countries in the region have not yet developed a coordinated strategy to identify or assist victims of trafficking. South Africa's Children's Act provides a mechanism to assist child victims, but this has not yet been implemented or tested in practice. However, victims in destination or transit countries have been helped on an ad hoc basis by government bodies, in conjunction with NGOs and international organizations. In several countries, IOM has cooperated with NGOs and government to provide shelter, counseling and repatriation assistance to identified victims of trafficking, including on return to their home country. In Mozambique, NGOs have worked closely with police and the media to combat child trafficking and improve the treatment of trafficking victims. In addition, many NGOs throughout the region provide essential services (such as shelter, counseling, training, and legal assistance) to people in need (including abused women and vulnerable children), and could be brought into a trafficking support network and referral system.
- One of the major gaps identified to date is the absence of clear policies or procedures for handling cases of trafficking when they come to the attention of government or NGOs. In most situations, across the region, cases are handled on an ad hoc basis, with mixed results. As part of an effective counter-trafficking strategies, all countries in the region should consider developing a "protocol" or procedures which outline what should be done, who should be contacted, who is responsible for what, etc., when a trafficking or suspected trafficking case is identified. This protocol should be developed in conjunction with NGOs, as in many cases, they will be the ones in the best position to provide emergency or longer-term care to the victims, as well as legal advice and counseling services.

2. ZAMBIA'S NATIONAL LEGAL AND POLICY FRAMEWORK TO COMBAT HUMAN TRAFFICKING

2.1 CONSTITUTION AND INTERNATIONAL COMMITMENTS

Part III of the Constitution of Zambia recognizes a number of fundamental rights and freedoms relevant to human trafficking. These include:

- the right to life, liberty, security and the protection of the law;

- the right of young persons¹² to protection from exploitation, unlawful child labor, trafficking, ill-treatment and cruelty (11(a)(c) and 24(1)-(4));
- the right not to be held in slavery or servitude (14(1));
- the right to be protected against forced labor (14(2); and
- the right not to be subjected to torture, inhuman or degrading treatment (15)
- the right to compensation for unlawful detention (13(4).

Zambia is also party to several of the relevant conventions and protocols including:

- Convention on Transnational Organized Crime
- Trafficking Protocol (acceded¹² to on April 2005)
- Migrant Smuggling Protocol
- Convention on the Rights of the Child
- Convention against the Elimination of All Forms of Discrimination against Women (CEDAW)
- ILO Forced Labour Convention (1930) (No. 29)
- ILO Minimum Age Convention (1973) (No. 138)
- ILO Convention on Worst Forms of Child Labour (No. 182)
- The Slavery Convention
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)
- African Charter on Human and Peoples Rights
- Protocol on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- Charter of Fundamental Social Rights in SADC (2003)

2.2 CRIMINAL OFFENCES

Until very recently, Zambia did not have an offence of human trafficking in its Penal Code. Following the prosecution of the “Congolese” child trafficking case in May 2005, many in government publicly acknowledged the need to strengthen Zambia’s

¹² The Constitution defines a “young person” as any person under the age of fifteen years.

criminal laws to address the problem of trafficking and pushed for the inclusion of a specific trafficking offence in the Penal Code (Amendment) Bill of 2005.

The current law makes it a criminal offence:

“to sell or traffick [sic] in a child or other person for any purpose or in any form,”

with a minimum penalty of “not less than twenty years” imprisonment. Trafficking “for the purpose of causing the child or person to be unlawfully and carnally known by any other person” carries a penalty of up to life imprisonment – the same as for rape or defilement. Unfortunately, the proposed amendment does not define the term “traffick” or “trafficking” or clearly set out the elements of the offence. While aimed at maximizing flexibility in light of the difficulty of proving human trafficking, the vague and open-ended language of this provision makes it difficult to enforce as currently drafted. The provision also fails to address the equally important components of prevention and protection of victims.

A second “anti-trafficking” offence is contained, not in the Penal Code, but in amendments to the Employment of Young Persons and Children’s Act (2004) relating to “worst forms of child labor” (sections 4B and 17B). This statute prohibits trafficking of children, slavery, slavery-like practices and the use of children in harmful and illicit activities such as prostitution and pornography. Key terms such as “trafficking” and “slavery” are not defined, however, and the law only applies to persons under 18. Moreover, it appears that Zambia’s general extra-territorial provision does not apply to offences contained in enactments outside the Penal Code. (See discussion of extra-territorial jurisdiction, below).

Zambia’s Penal Code also contains a number of provisions that could be used against traffickers in some trafficking cases. These include: procurement for prostitution (section 140), procuring defilement by threats or fraud (section 141), detention with intent in premises or brothel (144); living on earnings of prostitution (147); child pornography (177A); kidnapping/abduction (sections 251-258), slavery (section 261), abduction for slavery (section 256), “dealing in slaves” (section 262), forced labor (section 263), abduction for sexual purposes (sections 135-136), “threatening violence” (section 90), as well as numerous prostitution-related offences. Other relevant offences may be found in:

- The Immigration and Deportation Act
- The Employment of Young Persons and Children Act (Amended 2004)
- Anti-Corruption Commission Act (1996)
- Adoption Act
- Juveniles Act, and
- Prohibition and Prevention of Money Laundering Act (2001)

The limitation of these laws is that none capture all the elements of the crime of trafficking or reach trafficking in all forms (as required by the UN Protocol). However, these provisions could be used to prosecute traffickers for some form of unlawful conduct in appropriate cases. Attempt (Section 389-392), “common purpose” (Section 22), aiding/abetting or “counseling”/procuring someone to commit an offence (Section 21/23), and conspiracy (Section 394-396) are also all criminalized in general provisions of the Penal Code.

2.2.1 Limitations of current Penal Code offences to prosecute trafficking

Zambia’s Penal Code is over sixty years old and based on the English law developed for use in the British colonies. Many emerging issues, such as human trafficking, domestic violence, child prostitution and organized crime are not criminal offences in the current code. Child pornography has only been added recently in the 2005 amendments. Drug trafficking, money laundering and corruption are addressed in separate, specialized statutes. However, even these “modern laws” are linked to the Penal Code in some ways.

Under the current Code, there is no single provision that “establishes as offences” all forms of conduct defined in Article 3 of the UN Protocol. The new trafficking offence is broadly worded, but the absence of a definition makes it difficult to enforce, and arguably over-broad. In terms of “recruitment,” Zambian law prohibits “procurement” for prostitution or for extra-marital sexual intercourse (if the woman is under 21 or the defendant uses threats or fraud) both inside and outside the country (sections 140/141). However, procurement offences are by definition limited to prostitution or sexual intercourse and would not cover any form of non-sexual trafficking (i.e. for labor exploitation or body parts). Other forms of sexual exploitation (such as use in pornography, explicit performance, forced marriage, or sex acts not involving intercourse) might also be excluded from the scope of the offence, and despite new gender-neutral language, some male victims of trafficking would not be covered.¹³ Although the recent amendments significantly increased the penalties for this offence, procurement -- even by threats, intimidation, false pretence or fraud – still requires a corroborating witness. This requirement alone is sufficient in many cases to render the provision unenforceable.

The amended Penal Code contains two new offences, child pornography (section 177A) and compelling a child to become a prostitute (section 147) that could be used in some sex trafficking cases involving children. However, the amended law also seems to criminalize prostitution itself (section 146(b) which could ultimately be used against victims of trafficking. “Procurement” for pornography is not criminalized. Moreover, the law by definition is limited to children under age 16 – anyone over 15 years old is not protected.

Aside from “morality offences,” the Penal Code also contains various “offences against liberty.”

A section 135 Abduction does not require corroboration. However, the scope of the law is also very limited. The purpose of the abduction must be for marriage or carnal knowledge of a female person, and prosecutors must prove that the “taking away” or

¹³ Note that the amended provision retains the term “carnal knowledge” in the definition of the offence, even though only a female can be “carnally known” as a matter of law.

“detention” of the woman (or girl) was “against her will.”¹⁴ While some trafficking cases do involve “classic” abduction – that is, abduction by force – many more involve the use of fraud, deception, intimidation coercion, abuse of power or parental authority to obtain the “consent” of the victim. Although prosecutors can (and should) argue for an expansive application of this statute to trafficking cases, arguing in effect that consent is negated by deception or coercion, courts (and case law) might not recognize or allow it in practice.

For trafficking of children, a stronger penal code provision is Section 171: Child Stealing. Under Section 171, it is an offence to “forcibly or fraudulently” take or entice away or detain a child under the age of 16, or to receive or harbour the child, knowing it to have been so taken or enticed away or detained.¹⁵ Although the definition of the offence is almost identical to the offence in Malawi, there are two important differences – 1) it covers children up to 16 years old, instead of 14 years old; and 2) it carries a much harsher penalty – 14 years imprisonment instead of 7. This provision could be used in trafficking cases to reach recruiters as well as those who transport or detain the child (up to the limits of Zambia’s territorial jurisdiction). The consent of the child is not relevant, nor is it necessary to prove the purpose behind the child stealing – a benefit in trafficking cases where the exploitation cannot be proved or has not yet occurred. However, there are also significant limitations – child stealing requires “intent to deprive any parent, guardian or other person who has the lawful care or charge” of the child – a potential problem in trafficking and trafficking-related cases in which the parents, guardians or institutional custodians give “consent,” are knowingly complicit in the trafficking, or cannot be identified or located.¹⁶ The statute also does not protect older children (16-18) from trafficking, as required by the Protocol.¹⁷

Zambia’s Penal Code also includes several provisions relating to slavery and other “offences against liberty.”¹⁸ It is possible that these provisions could also be used in some cases to prosecute human trafficking. For example, section 267 makes it a felony to import, export, remove, buy, sell or dispose of any person “as a slave,” or to accept, receive or detain “against his will any person as a slave.” “Habitually” importing, exporting, removing, buying, selling, trafficking or dealing “in slaves” is also a felony punishable by up to ten years imprisonment. Finally, it is a felony to kidnap or abduct a person in order to subject that person (or put the person in danger of being subjected) to “grievous harm,” “slavery,” or the “unnatural lust of any person,” or to abduct or kidnap a person knowing that such an outcome is “likely” (section 256, punishable by up to ten years). “Abduction” under this section of the Code is defined broadly as compelling a person by force or inducing a person by deceitful means “to go from place to place,” while “kidnapping” means conveying a

¹⁴ But see, Penal Code section 253 et seq. (criminalizing abduction/kidnapping for other purposes).

¹⁵ See also, section 252 (kidnapping from lawful guardianship) and 254.

¹⁶ Obtaining evidence of parental consent is very difficult, for example, in cross-border or transit cases where the parents (if any) are outside the country, or in cases where the children are living “on the streets” without a parent or guardian.

¹⁷ But see, sections 254, “Any person who kidnaps any person from Zambia or from lawful guardianship is guilty of a felony and is liable to imprisonment for seven years.” See also, relevant sections on abduction (253 et seq.).

¹⁸ Under international law, a “slave” is a person “over whom any or all of the powers attaching to the rights of ownership are exercised.” See Slavery Convention and Supplementary Convention (Slavery and Practices Similar to Slavery). “Slave” or “slavery” does not appear to be defined in Zambian or English case law.

person outside of Zambia without the consent of that person (or of some person authorized to consent on behalf of that person)(sections 251 and 253).

It may be possible to charge human traffickers under these existing provisions, particularly where there is evidence of sexual servitude, sexual deviance, other forms of sexual exploitation, forced labor or severe forms of labor exploitation, unlawful confinement, debt bondage or “sale.” However, all would require creative argument and reference to international law, as Zambian case law does not offer any guidance on applying these statutes to contemporary forms of human trafficking. Even if these statutes could be used in some cases, Zambia’s slavery and abduction provisions would not reach all conduct defined as trafficking under the UN Protocol.

Aside from section 141(b)(procurement for defilement by false pretences or false representations) and 256 (abduction for slavery) – which are limited to narrow circumstances – the Zambian Penal code does not criminalize fraudulent or deceptive “recruitment.” Victims of trafficking are often recruited by means of deception, particularly through false promises of employment, marriage or educational opportunities. However, Zambia does not have a specific provision criminalizing fraudulent labor recruitment or advertising, or a general fraud provision broad enough to encompass this or similar kinds of conduct. Zambia’s “false pretence” chapter (Chapter XXX) criminalizes deception only in very specific circumstances (i.e. to obtain goods, credit, securities, etc.). Even the common law crime of “obtaining pecuniary advantage by false pretences” is narrowly defined and would not apply to recruitment (or attempted recruitment) of trafficking victims (section 309A). Only “conspiracy to defraud” (section 313) is general enough, but is only a misdemeanour and difficult to prove. The term “defraud” may also be limited by definition to financial crimes.

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

Non-sexual forms of exploitation are only marginally covered by existing criminal law. The Penal Code prohibits “slavery” – buying, selling, importing, exporting, receiving, etc., as discussed above -- as well as forced labor (section 263) and wrongful confinement (section 260) (both only misdemeanors). Concealment/confinement of a kidnapped/abducted person (258) and receiving/harboring a “stolen” child (171(b)) are more serious crimes, but also more difficult to prove in trafficking cases. Involuntary removal of body parts could be prosecuted as assault (or murder/manslaughter as appropriate), but is not specifically addressed in the Code. Aside from the Employment of Young Persons and Children Act (discussed below), Zambia’s labor statutes do not appear to contain any relevant criminal offences.

Finally, the Penal Code and common law include various “cross-cutting” offences that could be used in appropriate cases to increase the charges (and penalties) against traffickers or to reach accomplices. These include, for example, “threatening violence” (section 90), blackmail, assault, wrongful confinement, and false

declaration for passport (section 317), as well as attempt, aiding/abetting, counseling/incitement, common purpose and conspiracy.

The Penal Code does not currently provide for criminal liability of legal entities. The only statutory provision identified with respect to corporate liability is contained in the Money Laundering Act at section 8 (offences committed by a body of persons).

2.2.2 Employment of Young Persons and Children Act¹⁹

Potentially useful provisions for prosecuting child trafficking are contained in sections 4 and 17 of Zambia's (Amended) Employment of Children and Young Persons Act (2004). Under section 4A(1) of the Act, it is an offence to employ a child (a person under age 15) "in any covered worksite." A "covered worksite" is defined broadly as "any public or private undertaking" including "any commercial, agricultural or domestic worksite and any undertaking in which only members of the same family are employed"(section 2). Notwithstanding the above, section 4B(2) permits children aged 13 to 15 to engage in "light work" that is "not likely to be harmful to the child's health or development" and not prejudicial to the child's education or vocational training (section 4A(2)). The penalty for contravention of this section is a fine of up to 200,000 "penalty units," imprisonment of up to three years, or both.

Significantly higher penalties are available if a child or young person (15-18 years old) is employed "in any type of employment or work which by its nature or the circumstances in which it is carried out, constitutes a worst form of [child] labour." (Sections 4B and 17B). Based on the international definition (ILO Convention 182) "worst forms of child labour" is defined in the statute as:

- (a) all forms of slavery and all practices similar to slavery, such as the sale and trafficking of children and young persons, debt bondage, serfdom, forced and compulsory labour and forced or compulsory recruitment of children and young persons for use in armed conflict;
- (b) the use, procuring or offering of a child or young person for prostitution, production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child or young person for illicit activities, such as the production and trafficking of illegal drugs; and
- (d) work that by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children or young persons (Section 2).

A person who contravenes these sections is liable to a fine of not less than 200,000 penalty units up to 1,000,000 penalty units, or to imprisonment for a term not less than five years but not exceeding twenty-five years, or to both.

The statute has several positive elements. First, the general child labor provision applies to all sectors (including informal and domestic employment), but carves out an exception for "light work" that does not interfere with school (or other training) and

¹⁹ See Employment of Young Persons and Children (Amendment) (No. 10 of 2004)

is not “harmful” to the child. This seems to be a balanced and reasonably well-defined approach to child labor, without any significant loopholes. At the same time, sections 4B and 17B make it a serious offence to engage a child in “worst forms of child labor.” Given the definition in the statute, this provision could arguably be used to prosecute all forms of trafficking of persons under 18, including trafficking for prostitution, pornography or other sexual performance; forced, hazardous or harmful labor (in any sector); and even forced marriage/sexual servitude (a subject not normally covered by employment law).

The above provisions are aimed at addressing child labor, and not “human trafficking” per se. As a result, many of the terms, including the term “trafficking,” are not specifically defined, and it is not clear from the statute who could be prosecuted under this statute, aside from the actual employer. Arguably, anyone who procured, offered, caused, aided/abetted, incited or permitted the “employment” of the child could be held criminally liable for “contravening” the law, but this has not yet been clarified in regulations or tested in court. Given these limitations, it is not clear whether sections 4B and 17B would be easier or more difficult to prosecute than the anti-trafficking provision in the Penal Code. The Employment Act also allows a much lower penalty for worst forms of child labor compared to the “trafficking” and procurement/defilement provisions contained in the recent amendments to the penal code.

There are also many practical challenges to enforcement. In general, labor provisions are not widely enforced in Zambia due to lack of resources, capacity, and the small number of labor inspectors on the ground. In addition, the Labour Department has not traditionally prosecuted employers for illegal employment practices (particularly involving child labor) preferring to “advise, counsel and negotiate” with employers on these issues. Lack of awareness and training on the new law is also a problem. Despite its relevance to trafficking, many government and law enforcement officials are not familiar with the details of the 2004 amendments and have not received any training on the new provisions. Many may be unaware of its relevance to trafficking.

2.2.3 Immigration and Deportation Act

The Immigration and Deportation Act does not currently criminalize human trafficking or migrant smuggling as those terms are defined by the relevant UN Protocols. However, it does contain several provisions that could be used in appropriate cross-border cases to prosecute traffickers and their accomplices. These include (but are not limited to):

- 29(2): Entry into or departure from Zambia in contravention of the Act (failing to appear before immigration officer)
- 29(6): Employment of any person without valid work permit
- 29(7): Wilful concealment of identity, citizenship or country of origin (false statements, false representations, failure to produce passport or answer questions, etc.)

- 29(9): Assisting a person or persons whose entry into or presence in Zambia is in contravention of the Act (harbouring, making false statement, forging or altering permit or other document, knowingly using forged permit or document, unlawful use or uttering of any document or certificate, etc.)
- 30(4): Unlawful possession of multiple passports or identity documents
- 29(10): Knowing facilitation of unlawful entry or stay by an immigration officer

Penalties for immigration offences (unless otherwise noted) range from a fine of up to 6000 penalty units, imprisonment up to three years, or both (section 30(1)). These can be reduced where the defendant makes an admission of guilt (section 30(3)). Certain offences (including 29(9) where committed by an immigration officer), do not allow the option of a fine.

Like Zimbabwe, Zambian law also includes an important forfeiture provision at Section 30A. This provision allows the State to seize, detain and confiscate (upon conviction) any vehicle, boat or aircraft used in the commission of certain immigration offences, including:

- unlawful (or attempted unlawful) entry or departure from Zambia
- assisting another person to enter or depart unlawfully from Zambia
- conveying or attempting to convey any person unlawfully into or out of Zambia.

This provision could be used to significantly strengthen the penalties available to authorities in some cross-border trafficking cases. It could even be expanded to specifically include “conveying persons (with or without proper documentation) for purposes of or in connection with trafficking.” However, clear regulations and/or policy guidelines relating to seizure of vehicles are needed to enable immigration officers to apply the forfeiture provision in practice.

While not a criminal offence, Zambia’s current law also contains a provision establishing financial liability of carriers bringing a prohibited person into Zambia. (Section 8). Under this section, the carrier is responsible to remove the prohibited person or be held liable for any expenses incurred by the government in connection with the deportation.

Unlike some of its neighbors, Zambia has specifically addressed illegal exit/ departure from the country in its immigration law, closing that potential gap in terms of human trafficking through or from Zambia to other countries. Sections 29(9) and (10) could be strengthened by specific inclusion of unlawful exit (i.e. assisting to exit unlawfully or conveying another unlawfully out of Zambia) in the definition of those offences. However, it appears that immigration prosecutors could prosecute facilitated unlawful “exit” under existing law, using section 29(2) in conjunction with the general aiding/abetting provision in the Penal Code.

Immigration laws can be useful in suspected trafficking cases where the purpose behind an illegal entry, transit or exit is unknown, or where jurisdictional or evidentiary obstacles prevent prosecution on other charges. They are generally less difficult to prove and in some cases even shift the burden of proof to the defendant (i.e. to establish his or her legal status or possession of proper documents). The weakness of the immigration laws is that they do not recognize (or adequately punish) the distinct and serious offence of human trafficking or address the problem of internal trafficking (within a country's national borders). They may also be used to prosecute victims of trafficking, often more harshly than the traffickers themselves.

2.2.4 Other offences

In addition to the laws discussed above, the Zambian legal framework contains a number of other statutory provisions that may be relevant to the prosecution of human trafficking and warrant more in-depth review. These include, for example:

- Adoption Act²⁰: offence to receive or make a payment in connection with arrangement of adoption (section 30); offence to advertise for adoption (section 31); offence to send an “infant” (person under 21) abroad “in connection with adoption” without proper license or authority. Penalties for adoption offences carry a penalty of 500,000 penalty units, or in the case of section 32, a fine or imprisonment up to six months, or both.
- Juveniles Act: Sections 46-52 (regarding children in prostitution/brothels/bars, exposure to immoral or harmful conduct, neglect of parental duty, handing over a child, etc.), and
- Employment Act (wage and hour regulations)/ minimum wages and conditions of employment orders
- Anti-Corruption Commission Act (corruption of public officials), and
- Prohibition and Prevention of Money Laundering Act (see discussion below).
- Passport Act

2.3 CURRENT STATUS OF CTOC PROVISIONS

2.3.1 Extra-Territorial Jurisdiction

Jurisdiction in Zambia covers offences committed within Zambia, as well as offences (or acts) committed “partly inside and partly outside” Zambia. (Penal Code section 6.) In the latter case, the courts may reach “any person who within Zambia does any part of such act, as if such act had been wholly done within Zambia.” In addition, Zambian law (section 6(1)) allows courts to exercise jurisdiction over *Zambian citizens who do any act outside Zambia*, which, if wholly done within Zambia, would be an offence against the Penal Code.

²⁰ CAP 54, Laws of Zambia.

Because of these two provisions, Zambia's jurisdiction is broader than most countries in the region. Under this law, for example, a Zambian trafficker who took a victim into another country, assaulted or sexually violated her there, illegally detained or confined her, sold her "as a slave," or lived off prostitution earnings, could be prosecuted for these crimes in Zambia. However, jurisdiction would not be broad enough to cover non-citizens (even ordinary residents or refugees living in Zambia) or non-resident foreigners — even if the victim were Zambian — unless it could be shown that the crime was committed by that person partly within the jurisdiction. So, for example, a South African brothel owner or a non-Zambian "middle-man" who bought, sold, transported or exploited a Zambian wholly outside the jurisdiction would probably not be prosecutable in Zambia.

Another potential weakness in the provision is the statement that the offence must be an offence against "this Code" — that is, the Penal Code. In that case, extra-territorial jurisdiction might not apply to offences under other statutes, such as the Employment of Young Persons Act or Immigration Act. This could severely limit the effectiveness of trafficking prosecutions relying on those or other non-penal code provisions.

2.3.2 Organized Crime

Zambia does not have a specific legal provision criminalizing racketeering or participation in an organized criminal group, only the general "common purpose" provisions in the Penal Code. According to the Drug Enforcement Commission (DEC), organized criminals are currently prosecuted for the "predicate offences" of drug trafficking, vehicle theft and other crimes under existing law. The DEC regularly investigates and prosecutes organized criminal activity (including trans-national activity) relating to drug trafficking. Although it is possible that these same syndicates might also be involved in human trafficking, the DEC has not investigated any such cases. Given its specific mandate, the DEC does not normally handle non-drug cases unless they involve a money laundering offence. Other law enforcement divisions are responsible for other forms of "organized crime" -- i.e. vehicle theft by police, goods smuggling by customs, migrant smuggling by immigration, child trafficking by the Victim Support Unit. If a DEC officer suspected that trafficking or smuggling might be involved in a case, they would most likely refer the case to the VSU or Immigration.

There is no specialized unit in Zambia established to investigate or prosecute human trafficking. At present, it is not within the DEC mandate to investigate trafficking cases -- the Immigration Department or Victim Support Unit of the police handle human trafficking cases in Zambia. However, neither of these agencies have the resources or capacity to conduct complex, trans-national investigations.

2.3.3 Extradition

Zambia has an Extradition Act that governs extradition to and from Zambia.²¹ The Act includes extradition provisions for both Commonwealth countries (Part III) and "Foreign Countries" (Part II). Application of the Act with respect to "foreign countries" is conditional on Zambia having entered into an "extradition agreement" with that

²¹ CAP 94, Laws of Zambia.

country. Application of the Act to other Commonwealth countries requires a Presidential designation by “statutory order.” “Extraditable offences” applicable to Commonwealth countries are defined in Part III as offences having a maximum penalty of at least one year or more and which fall within the description of offences listed in the First Schedule (section 17/25). Scheduled offences include “procuring, or trafficking in, women or young persons for immoral purposes”; kidnapping, abduction or false imprisonment; “dealing in slaves”; “unlawful sexual intercourse with a female” and indecent assault (but not child labor). Attempting, aiding, abetting, conspiring, counseling, and procuring to commit a scheduled offence, are also included as extraditable offences. For “foreign countries,” extradition may only be granted in respect to an offence punishable by both Zambia and the requesting country by not less than one year (section 4). In addition, all money laundering offences are deemed “extraditable offences” under section 25 of the Money Laundering Act.

Since trafficking is only considered a scheduled offence when the purpose is “immoral” (sexual) and does not include trafficking of men or older boys; it would be useful to amend the First Schedule to include trafficking in persons for any form of exploitation. Alternatively, a provision could be included in comprehensive anti-trafficking legislation defining all trafficking offences as “extraditable offences.”

2.3.4 Mutual Legal Assistance/ Cross-border cooperation²²

Zambia also has legislation in place regarding cooperation in criminal matters, the Mutual Legal Assistance in Criminal Matters Act (1993). The Act applies to any foreign state specified in an order made by the Minister of Legal Affairs under the Act (section 5). The current order includes (but is not limited to) Malawi, Mozambique, South Africa, Tanzania and Zimbabwe. Where there is no bi-lateral or multi-lateral treaty between Zambia and a foreign state regarding mutual legal assistance, the Minister of Home Affairs (with the agreement of the Minister of Legal Affairs) may enter into a short-term “administrative arrangement” with the other state for purposes of a specific investigation (section 7).²³ Except in the case of an “administrative arrangement,” the “applicable offences” for purposes of the Act are defined by the relevant bi-lateral or multi-lateral treaty. Money laundering offences are also covered by the Act.²⁴

The Act contains detailed provisions regarding the scope, conditions, and procedures for cooperation and the admissibility of evidence obtained under the Act. Among other things, the Act allows cooperation in terms of enforcement of fines, search and seizure of evidence, examination of witnesses, etc. Section 42 allows the Minister of Home Affairs (on request by the Attorney General) to authorize a foreigner to come to (and stay in) Zambia to testify, even if that person would be otherwise “inadmissible” under the Immigration and Deportation Act. This could be useful in trafficking cases to allow a victim or other witness to participate in investigations and/or court proceedings.

The Act aims to facilitate international cooperation in law enforcement matters by establishing procedures and guidelines in conjunction with relevant treaties.

²² CAP 98, Laws of Zambia.

²³ Conditions apply, for example, that the act under investigation is a criminal offence in Zambia.

²⁴ Section 28, Prohibition and Prevention of Money Laundering Act.

However, it does not prevent Zambia from co-operating with foreign or international authorities or organizations based on other agreements, arrangements or “practice” (section 4).

In practice, it does not appear that the Act is widely used by Zambian law enforcement. Although law enforcement has secured convictions in drug cases using information and evidence provided by other countries, it does not appear that Zambia relied on the Mutual Legal Assistance Act to do so. Rather, it appears that cooperation is mostly “informal” and based on “relationships developed” with other law enforcement agencies or individuals, or is organized through Interpol. Victim Support Unit police reported that cooperation had been good in the “Ireland case,” but for the most part, resources were simply not sufficient to conduct “international investigations.”

2.3.5 Corruption

Public corruption offences are contained in Part IV of Zambia's Anti-Corruption Commission Act.²⁵ These include, section 29: Corrupt practices by or with public officers; section 30: Corrupt use of official powers and procuring corrupt use of official powers, and section 39: attempting, aiding/abetting, counseling or conspiring with any person to commit an offence under the Act. The general penalty for public corruption is imprisonment for up to twelve years, with a minimum sentence of five years applicable to second or subsequent convictions. In addition, the court may order that any property or material benefit received by the defendant in the commission of a corruption offence be forfeited to the State (section 41).²⁶

The Act also establishes an Anti-Corruption Commission. The Commission is responsible for investigating and prosecuting corrupt practices and also for developing and implementing strategies and mechanisms to prevent corruption.

As a practical matter, many people in Zambia feel that corruption is still a large problem in the country and that anti-corruption legislation had done little to rein it in. Corruption both facilitates trafficking – particularly corruption of immigration and passport officers – and is also an obstacle to criminal prosecutions. According to one police officer, dockets can easily be “lost” or a prosecution postponed or withdrawn.

2.3.6 Asset Forfeiture/Proceeds of Crime

Zambian law allows asset forfeiture in specific types of criminal cases under various statutory provisions. The Prohibition and Prevention of Money Laundering Act (2001) includes detailed provisions allowing seizure and forfeiture of criminal proceeds with respect to money-laundering offences. Forfeiture is also permitted for certain theft offences (Penal Code), corruption offences (Corruption Act), drug trafficking (DEC Act), customs, and wildlife poaching (ZAWA). There does not appear to be a general provision in the Penal Code or Criminal Procedure Code permitting asset forfeiture in relation to other offences, although prosecutors claim they can apply to the court for forfeiture of assets under certain circumstances.

²⁵ CAP 91, Laws of Zambia (No. 42 of 1996)

²⁶ Under section 49 of the Act, an accused is “presumed” to have acted with corrupt intention unless he or she can offer a satisfactory explanation. Section 59 also extends liability for corruption offences committed outside Zambia.

Under current law, it appears that forfeiture of criminal proceeds would only be available in a human trafficking case if the trafficker were charged with money laundering in addition to another offence (i.e. abduction). A court might also be able to confiscate a trafficker's vehicle under the Immigration Act if the vehicle (or boat or plane) were used to convey others illegally into or out of the country.

2.3.7 Money laundering²⁷

The Prohibition and Prevention of Money Laundering Act (2001) establishes regulatory and monitoring mechanisms to prevent, investigate, and prosecute money laundering activity, establishes several serious criminal offences, and contains detailed provisions enabling confiscation and restraint of property. The offence of money laundering is punishable by a fine not exceeding 170,000 penalty units or imprisonment up to ten years or both. Attempt, aiding/abetting, counseling/procuring and conspiracy to commit a money laundering crime are punishable by a fine not exceeding 139,000 penalty units or imprisonment up to five years. Legal entities (whether corporate or unincorporated) may also be held criminally liable.

Although housed under the DEC, the provisions of the Money Laundering Act are not limited to drug crimes. Significantly, it is an offence under the Act to launder the proceeds of any "*illegal act*." As a result, the Act could be used to prosecute human traffickers for money laundering (in conjunction with another offence, such as procurement, running a brothel or child labor) even before trafficking in persons is made a distinct criminal offence. Charging a trafficker under the Money Laundering Act would also enable prosecutors to confiscate criminal proceeds and access mutual legal assistance and/or extradition procedures in cases where the underlying offence would not otherwise be covered.

While there is no threshold requirement in the Act for money laundering cases, as a practical matter (given limited resources), the Anti-Money Laundering Investigations Unit can only focus on "big cases." Still, human trafficking is a very lucrative business for criminals and law enforcement should be prepared to investigate and prosecute money laundering in conjunction with suspected human trafficking where practicable. The Unit has already secured several convictions, primarily in corruption and financial crimes cases, and is in the process of recommending changes to further strengthen operations.

2.3.8 Witness Protection

Zambia does not have a statutory witness protection scheme, nor is witness protection addressed in the Penal or Criminal Procedure and Evidence Codes. According to DEC officials, the Money Laundering Act contains provisions to protect informants and witnesses in money laundering cases. In practice, this primarily involves protecting confidentiality of informants. Police can also "hide" witnesses, if necessary, in any criminal case, although this is not done very often. There is no protection program or procedure for witnesses after criminal proceedings are concluded.

²⁷ CAP 96, Laws of Zambia.

2.4 LAWS AND POLICIES AVAILABLE TO PROTECT TRAFFICKED PERSONS

At this time, Zambia does not have an official policy or legal framework in place aimed at addressing the needs of trafficked persons. In the last year, Zambia has made an effort to protect and assist identified victims of human trafficking, particularly children, through cooperation with IOM and Zambian NGOs. Identification of victims remains a key obstacle to accessing any form of help or legal rights. If identified, it may be possible for victims (particularly Zambian citizens) to obtain some level of protection and assistance under existing law. Significant gaps exist, however, and many options have not been tested in practice.

At present, what limited services are available to victims of trafficking are provided by NGOs and international organizations. Access to legal representation and compensation are extremely limited, and few services are available at all in rural or border areas. These issues are addressed in detail in Part III (Protection).

2.5 PREVENTION OF TRAFFICKING

Zambia has not yet implemented a coordinated or comprehensive strategy to reduce the incidence of human trafficking. There has been some public awareness and capacity building around related issues, such as child labor. IOM and local organizations such as Anglican Project and MAPODE have conducted some research on trafficking patterns and related issues. However, it is clear that more needs to be done. The more information is known about the specific trends of trafficking in Zambia, and the profiles of both victims and traffickers, the greater will be Zambia's capacity to reduce trafficking, identify victims, and prosecute offenders.

2.5.1 Regulation of Employment Agencies and Advertising

According to several sources, there has been a “proliferation” of advertising in Zambia offering employment, educational, and marriage opportunities abroad. At present there do not appear to be any laws or regulatory agencies responsible for monitoring the content of advertising or holding advertisers accountable for deceptive or unethical practices. Moreover, there is no law currently on the books that can be used to prosecute fraudulent employment recruitment.

Under current law, labor recruitment agencies must be registered with the Department of Labour, and the Department has the power to investigate agencies before issuing or renewing a license. In practice, however, very little is required to register an employment agency and subsequent inspection/oversight of agencies by the Department is minimal to non-existent.²⁸ In part, this is due to under-staffing and lack of resources in the Department to carry out inspections. However, the situation is clearly aggravated by the absence of any laws regulating recruitment practices. As one official stated, “What [the agencies] are doing – however unethical -- is not

²⁸ Interview with Labour Inspector, August 2005. According to this inspector, “in most cases if the company has a desk and a computer and has filled out the paper work, that is enough to pass inspection. Ideally we would be more proactive to investigate the company and its officers before issuing a license, but there are not enough people to do this.”

necessarily *illegal*. We may not have the power to close them down, even if we wanted to.”²⁹

Zambian employment law used to include strict provisions relating to foreign employment, including a requirement that all contracts be government-approved. These were repealed to reduce red-tape and bureaucratic obstacles to Zambians seeking opportunities abroad. Although section 37 of the Employment Act includes provisions to enable a foreign contract to be “certified” by the Department of Labour (and even for a bond or security to be paid to guarantee payment under the contract) these provisions are voluntary and rarely used by individuals.

2.5.2 Root causes: Gender discrimination and violence against women and children

Although Zambia has taken some steps to address these issues, some stakeholders have expressed concern regarding the weakness of current law to protect women and children from violence, discrimination and abuse. Among the “gaps” identified is a section in the current Constitution allowing discrimination in areas regulated by customary law, such as marriage, inheritance and property. As one expert stated, “these are the issues that most effect the vast majority of Zambian women and girls and make them vulnerable to poverty, exploitation and abuse. How can you have equality in some areas and yet ignore these?” Women lawyers and Victim Support Unit police also pointed out the lack of domestic violence and child abuse legislation in Zambia. “What is needed is not just better criminal law, but a system of social protections and public education so we can really begin to address these issues in our society.”

3. ZAMBIA’S EXPERIENCE APPLYING NATIONAL LAWS IN TRAFFICKING CASES

In the absence of a distinct offence, police and immigration prosecutors have used a range of laws under the penal and immigration codes to prosecute traffickers and trafficking-related cases. Most cases prosecuted to date have involved “internal” forms of sex trafficking involving children or young people.³⁰ They are not generally identified as “trafficking” since this is not an offence. Instead, they are charged as abduction, child stealing or defilement.³¹ Immigration officers also noted a few cases in which young Zambian women have gone with men overseas on promises of marriage, only to be used by their “boyfriends” for prostitution when they arrived. The women eventually came back to Zambia, but the cases were not prosecuted because the “traffickers” remained outside the country.³²

²⁹ Ibid.

³⁰ Interview with Peter Kanunka, national coordinator, Victim Support Unit, August 2005. See also, report by Anglican Children’s Fund on child trafficking cases in Zambia.

³¹ Ibid. Note that various stakeholders interviewed, as well as the ACF report, referred to a number of child exploitation cases that could have involved trafficking or attempted trafficking, but these could not be verified. Prosecutors from the relevant Victim Support Units were not available to discuss the cases in detail, nor were police or court files available to review in Lusaka. I was also told that prosecutors were not allowed to discuss or share dockets for any pending cases, including those that had stalled, like the Ireland case.

³² Interview with immigration officials, August 2005.

Zambian officials were able to identify only two prosecuted cases involving cross-border trafficking for commercial sexual exploitation. The first was many years ago and involved an Australian attempting to leave the country with two Zambian girls. In that case it appears that the defendant had promised the girls educational opportunities in Australia and had obtained the consent of their parents to leave. Although the defendant was found in possession of sexually explicit photographs of the girls, this was not found to be sufficient evidence to convict him for “trafficking” on the charges available.

The second case – referred to by police as the “Ireland case” – was investigated and prosecuted by the Victim Support Unit in 2003. In this case, two Zambian girls, aged 12 and 14, were trafficked to Ireland by an uncle who used them for sexual exploitation. The defendant was charged in Zambia with procurement for defilement by threats or fraud (a misdemeanor at the time). Despite the efforts of the VSU, cooperation from Irish law enforcement, and the testimony of the two victims (who could corroborate each others’ story), prosecutors were not able to obtain a conviction. According to the VSU, the court granted the defendant bail and he disappeared before the case was concluded. Fortunately the defendant was apprehended and the case is now being prosecuted in Ireland.

In 2005, Zambian law enforcement prosecuted another case of suspected child trafficking – also with unsatisfactory results. In this case, a Congolese woman was intercepted at the border attempting to leave Zambia with fourteen Congolese children, aged 7-18.³³ At least four of the children were endorsed (fraudulently) on her passport as being her own children. Although authorities suspected child trafficking, they faced a number of practical difficulties in prosecuting the case.

- At the time there was no trafficking offence with which to prosecute the suspected trafficker.
- Even if there had been a trafficking offence, authorities could not establish the real purpose for which the children were being transported or even where the children were being taken. (There was some evidence that they were heading for South Africa, but the final destination was unknown.)
- Charging the defendant with kidnapping or abduction would have required the police to identify and obtain evidence from the parents/custodians of the children in the DRC (or elsewhere) and to bring the parents to Zambia to testify. This was deemed to be too expensive and time-consuming (and may have been problematic if the children had “no fixed abode” or the parents had agreed to let the children go with the woman).
- The defendant could not be charged with “smuggling” because Zambian law did not have such provisions.
- Some stakeholders felt that it was in the best interests of the children to return them to the DRC as soon as possible, and not keep them in Zambia as

³³ See, e.g. “Immigration arrests Congolese woman with 16 children,” The Post, May 3, 2005.

potential witnesses pending a lengthy investigation. As a practical matter, this limited prosecutors to offences that did not require the children to testify.

After numerous consultations with various departments and stakeholders, it was ultimately decided at high levels of government to charge the defendant on two immigration charges – alteration of passport with intent to deceive and uttering a forged passport to Zambian immigration officers —to which the defendant pleaded guilty. Although the Court could have imposed up to three years imprisonment for these charges, the defendant was only sentenced to pay a 2,000,000 Kwacha fine (about \$US 400) with nine months imprisonment *on default*.

In this case, Zambian authorities worked closely with IOM and local NGOs to provide safe shelter and support services to the presumed victims. The children were repatriated to the DRC with assistance from IOM and a Congolese NGO. The DRC government reportedly agreed to try to identify the children and locate their real parents, but it is not clear what happened to them after the repatriation.

Zambian authorities have identified only one prosecuted case that might have involved human trafficking for labor exploitation. However, it was not prosecuted as such. In that case a foreign businessman “imported” eleven young men from Bangladesh, apparently intending to transport them on to the UK through Mozambique. The young men reportedly entered Zambia on tourist passports and were ignorant of the plan (believing that the businessman was going to employ them in Zambia). According to immigration officials, the young men were deported immediately, having round trip tickets in their possession. The businessman was charged with violating the terms of his residence/business permit and deported. He was not prosecuted on any criminal charges.

PART III: ELEMENTS OF A NATIONAL LAW AND POLICY FRAMEWORK

1. DEFINING HUMAN TRAFFICKING

The starting point for an effective strategy to address trafficking is a common definition. Without it, research on the extent of the problem as well as solutions to address the problem will be ineffective and uncoordinated. Although countries and organizations define “trafficking in persons” in various, and often conflicting, ways, the Trafficking Protocol provides the only internationally accepted definition of trafficking. The benefit of the Protocol definition is that it recognizes the wide range of ways that people can be trafficked and is broad enough to cover all stages of the trafficking process. It provides a basis for developing a common strategy among law enforcement, government officials, and NGOs. It also provides a basis for States to harmonize their legislative and policy provisions relating to trafficking, creating conditions more conducive to cross-border cooperation, investigation, prosecution, and protection of trafficked persons.

The Trafficking Protocol, to which Zambia is a party, defines trafficking as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Art. 3)

- (b) The consent of the victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in paragraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitations shall be considered “trafficking in

persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

2. ELEMENTS OF A COMPREHENSIVE COUNTER-TRAFFICKING POLICY: THE “3 P’S”

The need for a balanced, integrated, and multi-disciplinary anti-trafficking policy has been recognized by many States, as well as key international organizations. As recognized in the Trafficking Protocol, an effective policy framework requires States to address not only the post-trafficking prosecution of offenders, but also prevention and protection. These are commonly known as “the 3 P’s:”

- Prevention
- Protection, and
- Prosecution

To these, some also recommend a fourth “P”: namely, “Planning and coordination.” This includes such issues as:

- Establishment of a coordinating structure (national, local)
- Roles and responsibilities of different government agencies
- Roles and responsibilities of NGOs and coordination with law enforcement and government officials
- Resources
- Capacity building
- Establishment of a coordinated, multi-sectoral response and referral mechanism/ protocol for dealing with trafficking cases
- Coordinating anti-trafficking programs with other existing programs (such as child labor, OVC’s, poverty alleviation, HIV-Aids, etc.)

“Planning” can also be considered as a cross-cutting theme with relevance to each of the 3 “Ps” above.

3. GENERAL ISSUES AND POLICY CONSIDERATIONS FOR DISCUSSION

1. **Situational Analysis:** What has been your experience to date with cases of human trafficking (both internal and cross-border)? What kinds of cases have you encountered?

2. Obstacles: What obstacles or challenges have you faced in attempting to assist victims of human trafficking? Were you able to resolve these obstacles? If so, how?
3. What has been your experience working with law enforcement and/or government agencies on issues or cases relating to human trafficking? What challenges have you encountered? Were you satisfied with the level of cooperation or assistance you received?
4. What issues should be addressed in a national counter-trafficking policy? What is your vision for a national policy? What should be the guiding principles?
5. What issues require specific legal provisions or amendments to existing legal provisions?
6. What do you see as government's role in combating human trafficking?
7. What is the role of NGOs?
8. What role do you see for your particular organization? (i.e. services, outreach, advocacy, etc.)
9. What specific policies or mechanisms are needed to ensure that NGOs, government and other national stakeholders work effectively together to prevent human trafficking and protect the human rights of trafficked persons at the national level? At the local level?

4. SPECIFIC ISSUES RELATING TO PROSECUTION OF TRAFFICKING OFFENCES

The first element of an anti-trafficking framework, as set out in the Trafficking Protocol, is prosecution. The lack of specific and/or adequate legislation at the national level in Zambia has been one of the major obstacles in the fight against trafficking, along with the practical difficulties of investigation and obtaining evidence.

Police and immigration prosecutors in Zambia have made an effort to prosecute trafficking cases within the current legal framework, with mixed results. Although not necessarily identified as "trafficking," internal cases (involving sexual exploitation of children) have generally been more successful than cross-border cases, because prosecutors from the specialized Victim Support Units have been able to rely to some extent on existing abduction, child-stealing and defilement laws. To date, however, only one cross-border case (involving Zambia as a transit country) has resulted in conviction on immigration charges.

Article 5 of the Trafficking Protocol requires member States to:

- "Establish as offences the conduct defined in Article 3, where committed intentionally"
- criminalize attempted trafficking
- criminalize participation as an accomplice to trafficking; and
- criminalize the act of "organizing or directing other persons to commit the offence of human trafficking."

The elements of the offence of trafficking, must include, at minimum:

- Act: all acts and attempted acts aimed at the recruitment, transportation, transfer, harboring or receipt of persons
- Purpose: for the purpose of exploitation. According to the Protocol, “exploitation” shall include (at a minimum) the exploitation of the prostitution of others, other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or removal of organs. Some of these terms are defined by international law; others are left to the States to interpret as they see fit.

Other issues:

Consent. The consent of the victim of trafficking to the intended exploitation is irrelevant where any of the means set forth in the Trafficking Protocol definition have been used or in any case where the victim is under the age of 18.

Means. Experts are divided on whether “means” should be included as an element of the offence of trafficking. Some prosecutors have argued that means are too difficult to prove and make the offence unnecessarily complicated. Others have argued that the definition is overly broad if the means are not specified. South Africa has dealt with this issue by inserting the language “by any means, including...” in the definition of the offence, and by limiting the definition of “sexual exploitation” to exploitation obtained through coercion, deception or abuse of authority. The International Human Rights Law Group (IHRLG) has recommended that the offence be defined as follows:

“All acts and attempted acts relating to recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of forced labour or services, slavery, practices similar to slavery, servitude or the removal of organs.”

Penalty: The Protocol does not specify a penalty for trafficking. However, it does require member States to treat trafficking as a “serious crime.” According to the CTOC, “serious crimes” are defined as offences punishable by a maximum penalty of at least four years imprisonment (Art. 2(b)).

4.1 QUESTIONS FOR DISCUSSION AND DEBATE:

1. What should be the elements of the offence of trafficking? To what extent should Zambia rely on the Protocol definition to define the elements of the offence? Should we expand or change the definition in any way? If so, how? Should the “means” included in the Protocol definition be included as an element of the offence? Should the offence include “internal” as well as cross-border forms of trafficking?
2. Should the elements of the crime be different for children? Should there be a separate offence for “child trafficking.” Should the crime of trafficking include all illicit or irregular adoptions, as per the South African proposal, or only when adoption is used as the means to obtain a child for exploitation. If illicit adoption is not included in the definition of trafficking, are current adoption laws adequate to deter and punish those who facilitate illegal adoption?

3. Zambian laws tend to define a child as a person under 16 rather than under 18. Most of the Penal Code offences relating to children, including abduction and sexual offences, define a child as a person below the age of 16 years. In the Employment of Children and Young Persons Act, a child is defined as a person under the age of 15; however, the protections in the Act against worst forms of child labor (including trafficking) apply equally to “young persons” (persons 15-18). International law (including the Trafficking Protocol) defines a child as any person under the age of 18. How should Zambia define a child for purposes of the trafficking law?
4. What forms of exploitation should be included in the definition of trafficking? Note for example that South Africa has included certain forms of child labor in its definition, and has expanded the use of organs to include all “body parts.” Should Zambia adopt a similar definition? Should all illegal child labor be included or only “worst forms of child labor?” What about forced or early marriages? Pledging children as consideration for a debt?
5. Should the definition of exploitation include “exploitation of prostitution” or “sexual exploitation,” or are these forms of exploitation sufficiently covered by the terms “forced labor or services, slavery, slavery-like practices or servitude?” If included, how should Zambia define “exploitation of prostitution” and “sexual exploitation” for purposes of the Bill? Should it include only coerced forms of sex? (Note the Protocol definition with respect to consent). If only coerced, how should coercion be defined? Is this an element that prosecutors can prove? Are there any indicators of coercion that could warrant a presumption/reversal of burden of proof?
6. Should there be a separate offence for facilitating or aiding/abetting trafficking or should “accomplices” be liable for the offence of trafficking under general principles of accomplice liability? Should they be liable to the same or a lesser penalty?
7. What should be the penalty for trafficking? Consider the current penalties for other serious crimes, such as drug trafficking. What is a “comparable” crime? Should some forms of trafficking be defined in the Bill as more serious than others? Should the penalty include “aggravating circumstances”? If so, what factors should constitute aggravating circumstances in the trafficking context (i.e. multiple violations, offences committed in an organized fashion or by organized crime syndicates, offences resulting in physical or psychological injury to the victim, offences involving minors, etc.)
8. Should there be a minimum sentence for trafficking? Pros and Cons.
9. Is Zambia’s existing general provision relating to extra-territorial jurisdiction sufficient to reach trafficking and trafficking related offences? If not, how can it be strengthened? Should the trafficking legislation include an express extra-territorial provision? How narrowly or broadly should this be defined?
10. Is Zambia’s legal definition of “counseling or procuring an offence” broad enough to encompass “organizing or directing others to commit the offence [of trafficking in persons]?” If not, how do we ensure that those who organize or are behind a trafficking operation (the “king pins” and managers) can be reached by Zambia’s anti-trafficking provision, including those that may be operating from outside the country?

11. Zambia does not have a general provision extending criminal liability to legal entities/juristic persons and partnerships, except with respect to money laundering. Should companies and other legal entities be held liable for trafficking in persons? Should the penalty differ for legal entities vs. individual perpetrators? Is the principle of employer liability sufficient in Zambia to hold employers liable for the criminal conduct of their employees?
12. Under what circumstances should parents/guardians or care givers of children be held criminally liable for trafficking or facilitating the trafficking of their children? Should parents/guardians or caregivers (individual or institutional) be treated differently than other “traffickers” under the law?
13. What other conduct relating to trafficking or the facilitation of trafficking should be criminalized? Consider gaps in other enactments, for example criminal law (sexual offences), immigration law, adoption law, labor law. Examples might include: Migrant smuggling, abuse of documents (confiscation, destruction, possession, concealment), forced or bonded labor, or fraudulent labor recruitment.
14. Assuming that many suspected cases of trafficking are discovered in transit (before the intended exploitation has occurred) how can we ensure that these cases can still be prosecuted? (Consider the “Congolese” case, for example, where the suspected trafficker was intercepted trying to cross the border with fourteen children, but the ultimate purpose of her actions could not be proved). What is the crime and is it distinct from trafficking? Should there be a presumption or reversal of the burden of proof requiring suspected traffickers to prove a legitimate and legal purpose for having persons (particularly children) in their custody?
15. Are there any forms of “exploitation” that need to be criminalized as separate offences apart from the process of trafficking itself? (i.e. trading in or removal of organs/body parts, forced labor, bonded labor/debt bondage, prostitution, engaging a child prostitute, forced marriage, domestic or sexual servitude, abuse of vulnerability, exploitation of migrant laborers, etc.) Recall that Zambia is sometimes a “destination” for trafficked women and children as well as a country of origin and transit. Trafficking also occurs “internally” within Zambian borders. Moreover, Zambian citizens who commit crimes outside Zambia can be prosecuted in Zambia for conduct constituting an offence in Zambia (Penal Code section 6(1)). What existing offences in the penal code, labor code, or any other enactments need modification or strengthening in order to adequately deter and punish the exploitation of trafficked persons?
16. Should trafficking offences be included in a separate Act or should they be drafted as amendments to the Penal Code? Pros and cons for each approach.
17. Jurisdiction. What courts should have jurisdiction over trafficking matters? Should jurisdiction be limited to higher courts? What are the practical implications of such a recommendation (pros and cons)?
18. Are there any evidentiary obstacles to prosecution of trafficking offences that require amendment (i.e. corroboration requirements, cautionary rules for children, questioning re: complainants sexual history, etc.)?
19. To what extent should Zambia address “organized crime” in trafficking legislation? Should Zambia create an offence of “organized crime” as required

- by the CTOC in the trafficking legislation? If not, how do we ensure that the trans-national, organized crime aspects of trafficking are sufficiently addressed in the trafficking bill? Should trafficking by an organized criminal group constitute an aggravating circumstance for purposes of sentencing?
20. Is the current money-laundering law sufficient to reach trafficking and trafficking-related offences? Should the trafficking law contain a specific offence relating to laundering proceeds from human trafficking? (Nigeria's anti-trafficking law has such a provision).
 21. Asset forfeiture: Should traffickers be subject to seizure and asset forfeiture for proceeds and/or instrumentalities of trafficking and related crimes? If so, should forfeiture be limited to cases where a conviction is obtained or should authorities be able to confiscate assets through civil procedures (as in South Africa)? Is the current law permitting asset forfeiture for money-laundering offences sufficient to reach everyone in the trafficking chain? How should the proceeds of asset forfeiture be used?
 22. How should bail for trafficking-related offences be handled? Should trafficking require a higher standard for bail? In what circumstances?
 23. Should a warrant be required to arrest a person reasonably suspected of trafficking in persons?
 24. Currently, trafficking cases have primarily been handled by the Victim Support Unit (VSU) of the police service or by the immigration department. Should Zambia create a specialized police and/or prosecuting unit to investigate and prosecute human trafficking and related offences? If so, where should this unit or units be "housed"? If the VSU continues to be responsible for trafficking, how will Zambia ensure that it has sufficient resources to conduct international/cross-border investigations and to investigate and prosecute criminal syndicates? What role should the DEC/Immigration Department play in trafficking investigations/prosecutions? What about Interpol? How can Zambia ensure that its law enforcement agencies work together to fight trafficking? What kind of institutional arrangement or coordinating mechanism is required/realistic?
 25. Should the Bill include any "directives" to law enforcement or the judiciary or are these more appropriately contained in a national policy framework? (Directives could include, for example, instructions to designate a "trafficking focal point," to develop implementing policies and procedures, to train employees, to develop procedural or sentencing guidelines, etc.)
 26. What mechanisms or policies are required to improve coordination and cooperation between law enforcement at the regional and international level? Is the legislative framework (Mutual Legal Assistance in Criminal Matters Act, Extradition Act, etc.) sufficient and workable? What legal and/or practical measures could be taken to improve coordination and cooperation? Consider to what extent the proposed measures could also be used to improve coordination on other aspects of anti-trafficking policy, i.e. protection of victims, passport controls, etc. What aspects of coordination/cooperation need to be included in legislation as opposed to the national policy framework?

5. SPECIFIC ISSUES RELATING TO VICTIM PROTECTION AND ASSISTANCE MEASURES

As recognized by the Trafficking Protocol, the second prong of a successful strategy to combat trafficking is the protection and assistance of victims.

Trafficked individuals are often subjected to severe forms of exploitation and abuse by their traffickers, particularly in the country of destination. If they do manage to escape from their situation, or if they are discovered or intercepted by police, they may be subjected to further trauma at the hands of state authorities who either do not identify them as trafficked persons in need of assistance, or who do not have systems or procedures in place to enable them to provide assistance. Across the region, victims of trafficking are more likely to be arrested, detained and deported as illegal immigrants than provided with protection or basic services. Nor are they given an opportunity in the destination country to seek legal redress or compensation from their traffickers.

Circumstances may not improve once the trafficked person returns to his or her home country. Trafficked persons may face retaliation or re-trafficking in their countries of origin, particularly if they have run away from traffickers before paying their debt. They may also not have access to necessary services such as medical treatment, psycho-social counseling, HIV-Aids testing and/or treatment, legal advice, or other reintegration assistance. Shame or continuing trauma may prevent them from reporting their case to the police or even from seeking help from NGOs. Even in internal cases of trafficking, victims may find it difficult to obtain the care and assistance they need, or the support necessary to encourage them to testify against their traffickers. In the absence of assistance, they may end up in the same or worse circumstances than they were in when they were trafficked.

Effective protection of trafficked persons requires a broad range of legal and non-legal measures. The UN High Commissioner for Human Rights has developed a document establishing guidelines and recommendations for the care and treatment of trafficked persons, based on human rights standards and international best practice. (See, UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking).

In addition, the Trafficking Protocol (Art. 7) and CTOC (Art. 24-25) outline a number of mandatory and “recommended” protection and assistance measures. These include:

- Regularizing the immigration status of victims of trafficking.
- Support services, including safe shelter, emergency medical care, psycho-social counseling, and legal advice. (Note that such services are required for children under the Convention on the Rights of the Child.)
- Protection of the trafficked person’s privacy and physical security (including but not limited to witness protection). Protection against retaliation and intimidation by the trafficker (before, during and after criminal proceedings).

- Opportunity for victims to receive information and to express their views and concerns in legal and administrative proceedings.
- Opportunity to receive compensation and restitution.
- Safe and dignified repatriation, with due regard for the trafficked person's safety and the status of legal proceedings.

Additional measures may be required for the protection and support of child victims of trafficking. In all actions concerning trafficked children, the “best interests of the child” must be the primary consideration, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies. (See UNHCHR Guidelines)

5.1 IDENTIFICATION AND PROTECTION OF VICTIMS OF TRAFFICKING

Identification of trafficked persons is an essential pre-requisite to victim protection. Identifying trafficked persons can be very difficult for law enforcement as the crime is usually hidden and/or easily mistaken for less serious crimes (such as immigration violations, child labor or prostitution). Moreover, trafficked persons are often viewed (and therefore treated) as criminals or illegal migrants rather than victims of crime. Victims rarely self-identify for many reasons: they may be unaware that they are being trafficked for exploitation (especially at the recruitment or transit stage); they may be afraid of going to jail, or too isolated and/or intimidated by their traffickers to seek assistance. Children and irregular migrants are particularly vulnerable and generally unable or unwilling to self-identify as victims of trafficking without support and appropriate intervention.

A trafficked person's first point of contact may be with any number of stakeholders – immigration officials, police officers, labor inspectors, social workers, medical service providers, or NGOs. All of these should be able to identify suspected or likely trafficked persons and refer them to assistance and protective services according to agreed-upon procedures.

To facilitate the identification of trafficked persons, South Africa has proposed to include “guiding principles” in its anti-trafficking legislation which list a range of criteria for determining whether or not a person is a victim of trafficking. These include such factors level of exploitation, signs of physical or emotional trauma, restrictions on freedom of movement, evidence of deception, debt bondage, etc. South Africa is also considering a proposal to allow the government to identify particular countries as A) countries of origin for trafficking to or through South Africa; B) countries of destination for trafficking from South Africa, based on identified patterns. Other countries address identification in policy rather than legislation. The Czech Republic, Croatia, and Bosnia, for example, have established various screening mechanisms for identifying trafficked persons and/or issued policy directives/guidelines to police, immigration authorities, and/or health professionals on the identification and treatment of presumed victims of trafficking.

In its Children's Act, South Africa has also included legal provisions aimed at facilitating the identification and protection of trafficked children. Under the Act, police

and other public officials have an obligation to refer abused or neglected children, unaccompanied children, presumed trafficked children, and children working unlawfully to a social worker. The social worker, in turn, has an obligation to bring the child before the Children's Court for a determination as to whether the child is in need of care and protection.

Like South Africa, Zambia has a legal framework in place to deal with juveniles (persons under 19 years of age) who are arrested or presumed to be "in need of care." Under the Juveniles Act, children and young persons who have been arrested or who are reasonably believed to be "in need of care" should be brought before the Juvenile Court and provided shelter in a "place of safety" pending investigation and resolution of their case. Juveniles "in need of care" includes those with no parent or guardian, those who have fallen into associations which expose them to moral or physical harm (including prostitution), and those who are victims (or at risk of becoming victims) of certain scheduled offences (including sexual and physical assault).³⁴ Although "trafficked children" are not explicitly identified as children in need of care, the current definition would appear to encompass many child victims of trafficking, both Zambian and non-Zambian (as well as many children at risk of trafficking). It is not known, however, whether this system would be appropriate for victims of trafficking or whether a more effective mechanism could be established. Moreover, it appears that children illegally in Zambia would not normally be brought under the jurisdiction of the Juvenile Court.

In several countries, such as Ukraine, Russia and Czech Republic, non-governmental organizations operate trafficking "hotlines." In South Africa, the hotline is run by IOM. In the US, the national hotline is the responsibility of the Department of Justice. These hotlines play an important role in identifying victims of trafficking. Victims as well as members of the public can contact the hotline to report a trafficking situation and request assistance. Most "hotlines" do not have sufficient resources to provide services 24 hours a day.

5.1.1 Questions for discussion and debate

- 1) Should guidelines be established for police, immigration, and/or other stakeholders regarding the identification (and treatment) of trafficked persons? If yes, should these guidelines be included in the proposed legislation? If not, who should develop these guidelines and where should such guidelines be "housed?" (regulations, national policy, individual agency policies, etc.?)
- 2) What other mechanisms or policies could be established to facilitate the identification of trafficked persons as victims of trafficking?
- 3) Should public officials and/or other professional persons have a legal duty A) to identify potential trafficked persons based on a prima facie screening procedure; B) to follow agreed-upon referral and notification procedures when a prima facie case is identified? If so, should this duty apply to all public officials or only those in certain categories? How should this duty be enforced?

³⁴ See e.g., Juveniles Act, sections 9-10.

- 4) Should the proposed legislation require training for police, immigration, and other public officials who are likely to come in contact with trafficked persons, or should this be addressed in terms of national or agency policy?
- 5) Should special procedures be established for police, immigration, and/or other stakeholders for identifying and referring adult victims of trafficking to care and protection services? If so, what should these procedures include?
- 6) Should special procedures be established for police, immigration, and/or other stakeholders for identifying and referring children who are suspected to be victims of trafficking, who are “unaccompanied minors” without proper documentation, or who otherwise appear to be in need of care and protection? If so, what should these procedures include?
- 7) Which government agency or structure should be responsible for determining whether or not a child has been trafficked and ensuring that the child’s rights and interests are protected? Should trafficked children be referred to the Juvenile Court (as per the South African model)? Does the current system have the capacity to deal with trafficked children? Are there currently any legal or procedural barriers to using this procedure for foreign or illegal migrant children? What alternative procedures or mechanisms are available to ensure that children’s rights are protected and that they are referred to services? What are the advantages/disadvantages of informal mechanisms vs. use of judicial proceedings?
- 8) Should there be a legal duty for members of the public to report suspected cases of human trafficking?
- 9) Is there a need to protect members of the public who report suspected cases of trafficking or related exploitation (i.e. whistle-blowers)? If so, what type of protection should be established? Should whistle-blowers be provided immunity from any legal action that could be instituted against them?
- 10) Are there currently any legal or practical obstacles to immigration officers investigating suspected cases of trafficking where travel documents appear to be in order? If so, should immigration officers be given greater authority to stop and question people entering or leaving the country under “suspicious” circumstances, or in cases involving unaccompanied minors? How do we increase the ability of immigration officers to identify potential trafficking cases while protecting the rights of travelers?
- 11) Should Zambia establish a national toll-free hotline to report suspected cases of trafficking? If so, should this be a government function? What department or institution should be responsible for operating and maintaining such a hotline service? What might be the benefits of having the hotline operated by a non-governmental organization or other institution? Are there currently any NGOs or international organizations with capacity to operate a hotline, and would this be sustainable?

5.2 RESIDENCE STATUS

Although Zambia is primarily a country of origin for trafficked persons, research suggests that Zambia is also a country of transit and destination.

In most cases of cross-border trafficking, victims enter the transit or destination country illegally or become illegal when their permit expires or when they work without a valid permit. They may also become “prohibited persons” by virtue of working in prostitution, having no resources to support themselves, or because of other factors. As a result, victims of trafficking may be arrested and detained, prosecuted for criminal offences, and/or summarily deported. Regularizing the residence status of foreign trafficked persons in the country of transit or destination (temporarily and/or permanently) is often necessary to prevent “re-trafficking” and to allow the trafficked person the opportunity to access support services, participate in criminal investigations and/or prosecutions, and seek legal redress and compensation. Criminal cases against traffickers often cannot proceed because the key witnesses (the victims) are deported.

Although not mandatory under the Protocol, the UN recommends that States create some legal means in place to stay deportation of foreign trafficked persons for a reasonable period of time to allow victims to access emergency services and allow them to repatriate safely and voluntarily. Several countries (such as Germany, Belgium and the Netherlands) have enacted policies allowing presumed trafficked persons a “reflection delay” – normally a period of at least 30 days in which the trafficked person can obtain legal, medical and other assistance in country without being required to testify as a witness or cooperate with law enforcement. The purpose of the reflection delay period is to allow the victim to evaluate his or her position in a secure environment while receiving services to aid in the victim’s recovery. Evidence from other countries shows that cooperation with law enforcement is enhanced by the provision of a “reflection delay” period, in part because victims are often too fearful or too traumatized initially to be of much assistance.³⁵ At the conclusion of the reflection delay period, victims are generally provided with temporary residence permits if they (1) are willing to assist with the investigation and/or prosecution of their traffickers or (2) can establish that they face a real risk of reprisal or re-trafficking upon return to their country of origin. In some countries, such as Italy, a trafficked person can be given temporary residence without cooperating with law enforcement, as long as other conditions are met.³⁶ Some countries have also enacted laws allowing long-term or permanent residency permits to be granted to trafficked persons in certain cases, i.e. to ensure the safety of the trafficked person, to allow the person to participate in legal proceedings, or because it is determined to be in the best interest of a child.³⁷

Several African countries have also addressed residency status in anti-trafficking legislation. The South African Children’s Act provides that if a trafficked child is found to be an illegal foreigner, the Children’s Court may order the child to be assisted in

³⁵ See Anti-Slavery International, “Human Traffic, Human Rights: Redefining Victim Protection,” London, 2002, p.2. In a 10-country survey of counter-trafficking measures, researchers found that the countries that fared better in prosecuting traffickers for various crimes (Belgium, Italy, Netherlands, United States) were the four countries that also had the most comprehensive measures for assisting victims, including temporary residency permits.

³⁶ In Italy, victims of trafficking are required to participate in social assistance and reintegration programs in cooperation with NGOs in order to receive a temporary permit. The permit allows the victim not only to remain in the country, but to enroll in educational programs and/or seek employment. The length of the permit ranges from 6 to 18 months.

³⁷ See, e.g. the United States’ Victims of Trafficking and Violence Protection Act. Under US law, “continued presence” is granted to victims of trafficking who are willing to cooperate with law enforcement authorities in the investigation and prosecution of traffickers. Victims may also apply for “T visas,” allowing them to remain in the US for three years, after which they may apply for permanent residency.

applying for asylum under the Refugees Act. Moreover, a finding by the Court that a trafficked child is a “child in need of care and protection” provides a legal basis to allow the child to remain in South Africa as long as the Court deems appropriate. Under section 290, a child may not be returned to his or her country of origin (or the country from where the child has been trafficked) without giving due consideration to the safety of the child in the country to which the child is to be returned, the availability of care arrangements in the country to which the child is to be returned, and the possibility that the child might be trafficked again. Proposed trafficking legislation in South Africa would extend similar protections to adult victims of trafficking. It would also provide for an unconditional 60 day “suspension of deportation,” followed by the granting of temporary residency for those who agree to cooperate with law enforcement.³⁸ South Africa is also considering a provision that would allow refugee status and/or permanent residency to be granted on humanitarian grounds where a trafficked person is able to demonstrate that he or she may be harmed, killed or trafficked again if returned to his or her country of origin.

Nigeria and Ghana have also included provisions for temporary residency in their trafficking laws. In Nigeria, victims of trafficking may be granted an undefined period of temporary residence to obtain health and other services, which remains valid for the duration of any criminal, civil, or other legal actions (section 36). Under Ghana’s Human Trafficking Act (section 35), trafficked persons may remain in Ghana “throughout the period of a legal investigation and prosecution of a trafficker.” The stay may be extended by the Minister of the Interior on a case by case basis, where it is determined to be in the best interest of the trafficked person.

Zambia does not have a specific law or policy currently in place to allow a “trafficked person” to avoid detention/deportation as a prohibited immigrant if he or she is in the country illegally. Under the Immigration and Deportation Act, once a person has been declared a prohibited immigrant, immigration officers are required to deport the person “at the first reasonable opportunity,” unless the person has been granted a special permit (temporary or visitor). Section 17 of the Immigration and Deportation Act allows an immigration officer to issue a temporary permit to a prohibited immigrant allowing that person to enter into and remain in Zambia until the permit expires. A permit may be granted for up to thirty days, or up to two years with approval of the Chief Immigration Officer. In theory, it appears that that a temporary permit could be issued to an “illegal” victim of trafficking to enable that person to remain temporarily in Zambia. However, this has never been tried and there are several practical obstacles. For example, applicants for a temporary permit are required to deposit a substantial sum of money as a condition precedent to the issue of a temporary permit. Immigration officers do not appear to have any discretion to waive the deposit.

At present, the practice in Zambia is to handle temporary stays informally. In the Congolese case, for example, Zambian officials did not grant the foreign children a particular legal status. However, their continued stay in Zambia (as well as their care and repatriation) was authorized by Home Affairs in consultation with other relevant ministries and various international organizations. Since that time, the Immigration department has referred other trafficked or unaccompanied children to shelters while

³⁸ South African Law Commission, Discussion Paper, p 174-175.

their cases were investigated and repatriation arranged. According to immigration officials, the children's stay in Zambia is permitted as long as the children are confined to the safe houses. The problem with this approach (as well as with a temporary permit) is that the process is "ad hoc" and discretionary – there does not appear to be a standard procedure or criteria for dealing with victims of trafficking, and victims are not entitled to a temporary stay. Moreover, there is no law or policy governing longer-term stays, as would be required in certain circumstances where the safety of the victim could not be protected or where legal proceedings were ongoing. Although identified victims are no longer deported, the tendency is still to arrange for repatriation as quickly as possible.

5.2.2 Questions for Discussion and Debate

- 1) Should Zambian law allow victims of trafficking to remain in the country temporarily? If so, under what conditions? Should there be a "special" permit for trafficked persons, or are existing provisions in the Immigration Code adequate? Should Zambia allow a "reflection delay?" Should the issuing of permits be dependant on the victim agreeing to press charges or testify in court? Are any amendments to the Immigration Act or Regulations required to enable victims of trafficking to obtain temporary residence permits?
- 2) Under what conditions should a trafficked person be allowed to apply for long-term or permanent residency? Should the policy for children be different than that for adults?

5.3 SHELTER AND OTHER SERVICES

Zambia does not currently have a national policy or program in place to assist victims of trafficking. In previous cases, the government has worked closely with international organizations and local NGOs on an "ad hoc" basis to provide emergency shelter and services to victims of trafficking, particularly children.

The government of Zambia does not currently provide shelter or direct services to trafficked persons. What services are currently available are provided by NGOs (primarily with international donor funding.) Several organizations in Lusaka operate shelters for vulnerable and needy children. Some offer services such as outreach, mobile medical clinic, family reintegration, psycho-social counseling, etc. There is no shelter for "victims of trafficking" per se, and extremely limited options for adults and teenage boys. There is also a severe shortage of shelter and other services in rural and border areas.

Despite limited sheltering options, there appears to be a good referral network among NGOs in Zambia. These organizations could be brought on board to provide a range of services to trafficking victims if adequate training and material resources were provided. IOM is currently working to build a network of potential shelter and service providers and to provide NGOs with training on trafficking and the special needs of victims of trafficking. Potential obstacles to rendering services include: access to/proper identification of trafficked persons, inadequate resources, language barriers, legal restrictions on providing assistance to "prohibited persons," and security concerns.

In most developing countries, NGOs and International Organizations provide the majority of services to victims of trafficking. Sometimes governments support these organizations with financial resources, but others rely on donor funding. In some countries, such as Ghana and the Philippines, the Department of Social Welfare is obliged to provide shelter and other services to victims of trafficking. In Ghana, the Department is required to establish “reception centers” for victims of trafficking, where “basic material assistance” will be provided until the person is repatriated or resettled. Funding for this program is to be provided through a “Trafficking Fund” made up of public funds, grants and voluntary contributions. In the Philippines, the government is legally required to implement a protection program for victims of trafficking in cooperation with NGOs. Under the Act, trafficked persons are entitled to receive emergency shelter, counseling, free legal services, medical or psychological services, livelihood and skills training, and educational assistance.³⁹

5.3.1 Questions for discussion and debate

- 1) What services should be provided to victims of trafficking? Should the type and/or level of services depend on whether the victim is a returning Zambian or a foreign victim of trafficking? Whether the victim is a child or an adult?
- 2) What should be the government’s role/responsibility in providing shelter and/or other services (medical, legal) to trafficked persons?
- 3) What Department(s) or institution(s) should be responsible for the provision (or coordination) of such services?
- 4) How can interaction and cooperation between the government and non-governmental organizations be fostered in order to ensure effective provision of services to victims?
- 5) What measures should be taken to ensure the safety of trafficked persons while in the care of the government or NGOs? What measures should be put in place to ensure the safety of victims of trafficking when repatriated to their countries of origin or returned to the place from where they have been trafficked?
- 6) What other practical obstacles must be overcome in order to provide assistance to trafficked persons? What legal and/or policy measures are needed to overcome these obstacles?
- 7) What options are available to fund shelter and services to victims of trafficking?
- 8) What services or assistance should be provided to Zambians who have been trafficked to other countries, including those who are still outside of Zambia? What department(s) or institutions should be responsible for the provision of such services?

5.4 ACCESS TO INFORMATION REGARDING LEGAL STATUS AND PROCEEDINGS

In order to exercise their legal rights and seek redress against their traffickers, victims of trafficking need to be informed of their legal rights and have the opportunity

³⁹ Section 16(b) and 23 of the Republic Act No. 9208 – Anti-Trafficking in Persons Act.

to participate in criminal and civil proceedings. For victims who have been arrested on immigration or criminal charges this includes a need for legal advice and/or representation. Unfortunately, legal assistance is rarely afforded to victims of trafficking in Zambia or elsewhere.

In Zambia, if a trafficked person is arrested or detained for a criminal offence or for being a “prohibited immigrant,” s/he would not be able to access legal advice under the current system, unless s/he could hire private counsel. This is unlikely in a trafficking case where victims do not know their rights or have access to financial resources. In Zambia, the state provides legal aid through the Legal Aid Department. Legal aid is not limited to Zambian citizens or to criminal matters. However, given the limited resources and capacity of the department, the reality is that Legal Aid lawyers only represent indigent clients in High Court and Supreme Court matters. Likewise, juvenile offenders and children/young persons “in need of care” are entitled to certain protections under the Juveniles Act, including the assignment of a social welfare or probation officer to accompany them in court. Implementation of these protections is “uneven,” however, and not normally afforded to juveniles detained or charged under the Immigration Act.

Zambian or resident victims of trafficking may seek assistance from the Victim Support Units of the police. These specialized units were established to handle cases involving violence against women and children. Although under-resourced, these units are specially trained to provide “victim-friendly” services (including information and support) to complainants and their families throughout the investigation and prosecution of the case. VSU officers have handled most cases of internal trafficking and child sexual exploitation in Zambia, as well as a few cross-border cases. “Immigration” cases are not handled by the VSU, however, so foreign/illegal victims of trafficking would not come to their attention unless the case was referred to them by Immigration or the victims sought help on their own.

In certain circumstances, victims of trafficking could also seek help from the Legal Aid Clinic for Women. The Legal Aid Clinic provides legal advice and representation to women and children. The clinic is a project of the Law Association of Zambia and funded by international donor organizations. The vast majority of their cases are civil claims relating to marriage and inheritance. They do not normally represent criminal defendants, but have advised victims of violence regarding their rights in criminal, civil, and administrative matters. In terms of assisting victims of trafficking, the Director stated that the clinic has not yet provided legal assistance or advice to any victims of trafficking, or anyone charged with an immigration offence. To do so, a victim would have to “self-identify” herself as a victim of trafficking and proactively seek legal aid from the clinic (or Immigration would have to call them in to assist). According to the Director, the Legal Aid Clinic could advise victims on their options and represent them in civil claims for compensation. However, they do not “represent” victims in criminal proceedings, or accompany them to court. In theory, the clinic could apply to the DPP to prosecute a trafficking case as a “private prosecutor.” Private prosecutions are “very rare,” however, and not normally undertaken by the Legal Aid Clinic.

In some civil law countries (such as Belgium and Germany), complainants are entitled to separate legal representation in criminal proceedings. The complainant’s

counsel is entitled to question witnesses, bring motions before the court, etc. – generally to represent the interests of the complainant. In common law systems, complainants in criminal proceedings are not normally represented in court. Only the prosecutor (who represents the State’s interests) is entitled to question witnesses, bring applications for compensation, challenge bail applications, etc. Some countries such as South Africa have implemented various “victim assistance,” “victim empowerment” and/or witness preparation programs in which NGOs or state-funded victim assistants liaise with prosecutors and provide support services to victims before and during court proceedings.

5.4.1 Questions for discussion and debate

- 1) Should victims of trafficking be entitled to obtain legal aid from the Legal Aid Department to advise and/or represent them in criminal/immigration matters? For civil or administrative claims against traffickers? If not, who should provide legal advice and representation (if required) to victims of trafficking?
- 2) Who should be responsible for advising trafficked persons of their legal rights? At what stage in the process should this occur?
- 3) What legal and/or policy measures are required to ensure that trafficked persons are informed as to the status of legal proceedings affecting them and have an opportunity to present their views and concerns to the relevant judicial or administrative authority?
- 4) Is it sufficient/realistic to require prosecutors to represent the interests of the victim in this regard or should another individual, institution or organization be allowed to “represent” the victim in criminal proceeding? Should it be the prosecutor’s role to explain the proceedings to the complainant and prepare the complainant to testify?
- 5) Should victims of trafficking be allowed to bring civil or administrative claims against their traffickers? If so, what resources or mechanisms are available to ensure that victims have necessary legal advice/support to bring these claims?

5.5 PRIVACY AND VICTIM-FRIENDLY COURT PROCEEDINGS

Although not specific to victims of trafficking, a number of countries in the region have established special rules and procedures to protect the privacy of complainants in criminal cases and reduce the trauma often experienced by complainants when they testify in court. In Tanzania, South Africa, and Zimbabwe, special court procedures have been established for child witnesses and/or victims of sexual offences. These include clearing the court or hearing testimony in camera, allowing testimony by closed circuit television and/or providing “intermediaries” for children. South Africa has also placed limitations on the ability of defense counsel to question complainants regarding their sexual history. Zimbabwe has developed a “protocol” or standardized procedures for the multi-sectoral management of child sexual abuse cases” which would presumably apply to any child trafficking case involving sexual exploitation.

Many countries also have laws limiting publication of the names of witnesses and/or complainants, particularly in juvenile court proceedings or in sexual offence cases. In

Ghana, it is specifically prohibited to publish any report of child trafficking proceedings which may reveal the identity of a trafficked child (section 39). Nigeria's anti-trafficking law also requires the identity of a trafficked person to be protected (section 36(g)).

Zambian law provides some protection for children in criminal proceedings under the Juveniles Act (relating to juvenile offenders). However there are no general provisions in the Penal or Criminal Procedure Code aimed at identifying or protecting "vulnerable witnesses." In practice, it appears that child witnesses are generally afforded some protections by the court. For example, most magistrates will "clear the court" during the testimony of a child witness in a criminal case or "advise on the manner of cross-examination." A prosecutor can also apply to the court to have the testimony heard "in camera." However, the child witness is still subject to direct cross-examination by defense counsel, or the defendant (if unrepresented), and requires corroboration of his or her testimony. Members of the judiciary in Zambia have apparently received some "sensitization" training on gender issues. However, there are no laws currently in place providing procedural or evidentiary protections for adult witnesses, even those who are victims of sexual offences.

5.5.1 Questions for discussion and debate

- 1) Should current law be amended to provide greater protection to victims of trafficking who testify in court? Should victims of trafficking automatically be considered "vulnerable?" What measures could realistically be implemented to protect the dignity of trafficked persons' in court and avoid further victimization through the legal process?
- 2) What changes to current law are required to ensure that the privacy and identity of trafficked persons are protected?

5.6 COMPENSATION AND RESTITUTION

Compensation payments are a form of justice that can have a positive effect on the victim's ability to come to terms with what they have experienced. Such payments also have a restorative and preventive effect, since they allow victims to build a new life for themselves on their return to their country of origin and reduce the risk that they will be trafficked again.

Compensation can theoretically be obtained in various ways: from the perpetrator, through criminal proceedings (i.e. as part of sentencing); from the perpetrator, through separate civil or administrative proceedings; or from the State, through the mechanism of a Victim Fund. Victim Funds may be funded through various means, including through forfeiture of traffickers' criminal proceeds and instrumentalities.

Three potential areas for claims should be considered:

- Compensation for personal suffering due to physical and psychological distress
- Damages due to material loss suffered

- Compensation for withheld earnings (or the value of victim's services)

In the United States, restitution for victims of trafficking is a mandatory component of criminal actions against traffickers. Courts are required to order offenders to compensate victims of trafficking for the full amount of their losses, including wages for labor or services. (VTPA, section 112(a)). After conviction, a “mini-trial” is held to determine the restitution award. Victims may also institute civil actions. Tanzania requires courts to award compensation to victims of sexual offences as a part of sentencing. In Nigeria, compensation is only available through civil claims. However, victims of trafficking, regardless of their immigration status, have a right to institute civil proceedings against traffickers and any other person who has exploited or abused them. A temporary permit to stay in Nigeria is valid for the duration of these legal proceedings. The Dominican Republic uses the proceeds of crime (obtained through asset forfeiture procedures) to compensate victims and to establish programs for protection and assistance to victims of trafficking generally.

In South Africa, legislation is pending that would allow a sentence of reparation to be imposed for any offence. Reparation is not mandatory, but must be considered in every case. (Sentencing Framework Bill, section 15(4)). Under the Bill, the court may sentence any person convicted of an offence to make appropriate reparation to the victim for damage suffered. Damage is defined as damage to or loss of property, including money; physical, psychological or other injury; or loss of income or support (section 37(2)). A sentence of reparation may be imposed on its own or combined with any other sentence (section 37(8)). South Africa has also established a victim of crime fund. Monies in this fund can be used to pay for victim services or prevention programs, but are not available to compensate individuals.

Opportunities for victims of crime to obtain compensation in Zambia are very limited. A complainant may seek compensation through a separate civil claim after a criminal case has been concluded. However, this is a lengthy and expensive process not available to most victims of crime (especially if the victim has been deported). Customary courts (local courts) also have jurisdiction to award compensation, but do not have jurisdiction over criminal matters.

Section 175 of the Criminal Procedure Act allows the court to order a convicted defendant to pay compensation “to any person injured by his offence.” Injury is defined as “any material loss or personal injury recoverable in a civil suit.” However, the amount of compensation available under the statute is very low and prosecutors must apply to the court for compensation.

The only other option available for a victim to obtain compensation is through the labor law. If a Zambian employee is not being paid by his or her employer (or is having other conditions of employment violated) s/he could seek assistance from the Labor Department. However, Zambian employment law is only applicable to formal sector employment. It does not apply to sexual exploitation. Domestic or agricultural workers would have difficulty obtaining “more than a minimal amount” because, while technically covered by the general provisions of the Employment code (assuming they have worked for the same employer at least six months) the law does not establish a minimum wage for those sectors. Illegal migrant workers exploited by their employers are not entitled to protection under the Employment Act and would

have no opportunity to seek redress for unpaid wages or other labor abuses. If they tried to bring a claim, they would most likely be turned over to immigration authorities for deportation. Even for legal workers, employment cases may take up to five years to be resolved.

5.6.1 Questions for discussion and debate

- 1) Should victims of trafficking be entitled to seek compensation or restitution? If so, what is the most practical way to afford this opportunity to victims? (criminal proceedings, civil claims, victim fund?) What legal obstacles, if any, would need to be addressed in order for this mechanism to work?
- 2) For what types of injury or damage should compensation be awarded?
- 3) Should asset forfeiture be used to compensate victims? Is this possible under the current legal framework?

5.7 DECRIMINALIZATION OF TRAFFICKED PERSONS

Victims of trafficking may violate certain laws in the course of being trafficked. Commonly, these include immigration laws or prostitution-related offences. Victims of trafficking may also be used by their traffickers to commit crimes, such as drug dealing or theft. The UNHCHR Guidelines for the treatment of trafficked persons state that trafficked persons should not be prosecuted or punished for criminal offences committed as a direct result of having been trafficked. The argument is that trafficked persons are victims of crime and should not be treated as wrong-doers. It has also been argued that victims are more likely to come forward and seek help (as well as to cooperate with law enforcement) if they do not fear prosecution for their own illegal acts. On the other hand, some officials fear that such a provision will be abused and that people will falsely claim to be victims of trafficking to avoid prosecution or deportation.

Some countries, such as the United States, have not included immunity provisions in their anti-trafficking laws, but do not prosecute *identified* victims of trafficking as a matter of policy/practice. Other countries, such as Kosovo, have included specific provisions in legislation to protect victims from prosecution for offences resulting from the trafficking. South Africa's current proposal leaves the decision to prosecute victims of trafficking in the hands of the National Director of Public Prosecutions. This proposal has been criticized, however, as leaving victims open to "re-victimization" by the State.

5.7.1 Questions for discussion and debate

- 1) Should a person who has been trafficked be provided with immunity from prosecution for offences committed as a direct result of being trafficked?
- 2) Who should make this determination?
- 3) What safeguards, if any, are needed to ensure that "immunity" provisions are not abused?

6. PREVENTION OF HUMAN TRAFFICKING

Article 9 of the UN Trafficking Protocol specifies a number of prevention measures that States should undertake as part of an overall strategy to combat human trafficking. In cooperation with civil society, these include:

- Research, data collection, and information sharing
- Education and mass media campaigns
- Measures to address the underlying causes of trafficking, including:

Root causes (“push factors”), and
Demand (“pull factors”)

States must also take steps to strengthen border control and document security and validation measures under Articles 11, 12, and 13.

A comprehensive anti-trafficking strategy will include wide variety of legal and non-legal measures aimed at prevention, including broad based awareness raising campaigns. These should aim at educating the public about the dangers of trafficking, the methods used by traffickers, and the consequences of being trafficked. Information should also be available to help those who are considering migrating for work or other reasons to make informed choices and to take proactive measures to protect themselves from trafficking or other exploitation.

In order to reduce trafficking, States must also take or strengthen measures to alleviate the factors that make persons, especially women and children, vulnerable to trafficking. These include factors such as poverty, underdevelopment and lack of equal opportunity. (Art 9 (4)). The protocol also requires States to adopt or strengthen legislative or other measures to “discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.” Art 9(5)

6.1 QUESTIONS FOR DISCUSSION AND DEBATE

- 1) What groups in Zambia are particularly vulnerable to being trafficked?
- 2) What are the key factors that contribute to the vulnerability of these groups? What legal measures, if any, can be taken to address these factors?
- 3) What is the impact of cultural traditions, customary laws and practices on the rights of women and children and do these contribute in any way to human trafficking? What is the appropriate strategy for addressing these issues?
- 4) To what extent are employment agencies/recruitment centers engaged in trafficking or facilitating trafficking? What can be done to improve regulation/oversight of recruitment practices? Should fraudulent employment recruitment or procurement of child labor constitute a criminal offence?
- 5) What can be done to deter and/or punish the use of the internet or advertising to recruit victims for trafficking (i.e. through false or misleading promises of jobs, scholarships, educational opportunities, marriage, etc.)?

- 6) Is there evidence that Zambia's labor laws, especially with respect to child labor a) contribute in any way to trafficking, either to or from Zambia; b) help prevent/deter trafficking?
- 7) To what extent is trafficking to or from Zambia linked to organized criminal syndicates? What do we know about these syndicates? What laws are needed to strengthen the legal framework relating to organized crime?
- 8) To what extent is adoption (either international or local) or even "fostering" being used to obtain children for exploitative labor or sexual exploitation? Are current adoption laws and procedures adequate to protect against this practice? If not, what laws and/or policies are needed to strengthen the legal framework?
- 9) To what extent is marriage being used to obtain women and/or children for exploitative labor or sexual exploitation? Are current marriage laws and procedures adequate to protect against this practice? If not, what laws and/or policies are needed to strengthen the legal framework?
- 10) What can be done to reduce/discourage demand for the services of trafficked persons in Zambia (i.e. demand for child domestic servants, foreign agricultural workers, and for women/children for sexual services?)
- 11) What measures can be taken to ensure that victims of trafficking in Zambia are provided with information on, inter alia, their rights, measures in place to ensure their safety, and how to contact authorities or others for help?
- 12) What measures can be taken to ensure that potential victims, their families, and the general public are informed about the dangers of trafficking and how to protect themselves?
- 13) What should be the role of various stakeholders (government, NGOs, schools, media, etc.) in promoting public education and awareness around human trafficking?
- 14) What measures are needed, if any, at the borders to strengthen border control?
- 15) What measures are needed, if any, to ensure the validity of passports and other identity documents obtained in Zambia and to reduce the incidence of corruption/fraud?
- 16) What can be done to encourage greater data collection and information sharing by stakeholders?
- 17) Should a data base of traffickers and/or victims of trafficking be established? If yes, what department or institution should be responsible for the administration of the data base? What legal or policy measures should govern access to and use of the information in the data base?

7. PLANNING AND COORDINATION

Unlike many other countries in the region, Zambia has established an inter-ministerial committee specifically to work on human trafficking issues. This structure is well placed to coordinate the development and implementation of a comprehensive counter-trafficking policy; however it lacks capacity and resources. At present, IOM is

playing the primary role in coordinating services to victims and liaising between government and NGOs in Zambia.

7.1 QUESTIONS FOR DISCUSSION AND DEBATE

- 1) Should there be a designated agency or permanent secretariat responsible for planning and implementing Zambia's counter-trafficking policy? If so, how should this structure be organized? Under what ministry should it be "housed?"
- 2) How can coordination between stakeholders be strengthened at the national and local level?
- 3) Should training and capacity building be addressed in the envisaged legislation or policy on trafficking in persons? If yes, what topics should be included in the training program? What categories of public officials should be provided with training? What other categories of persons should be provided with training on trafficking in persons? Should government be responsible for providing training for public officials? If not, what is government's role? How can training programs be sustained and integrated over the longer-term?
- 4) What formal and informal measures can be taken to improve regional cooperation and coordination around trafficking? Should Zambia seek to enter into bi-lateral or regional agreements with other governments with respect to trafficking? If so, what issues should these agreements cover?
- 5) What legal measures, if any, are required to facilitate or improve coordination, planning and cooperation at the national or local level, between government stakeholders and/or between government and civil society?

8. CONCLUSION

The government of Zambia is committed to fighting human trafficking. Strengthening Zambia's legal and policy framework is a critical component of this effort.

DELIVERABLE 2: DRAFT NATIONAL POLICY TO COMBAT HUMAN TRAFFICKING 2007

REVISED DRAFT 26/02/2007

**NATIONAL POLICY TO COMBAT
HUMAN TRAFFICKING
2007**

**REPUBLIC OF ZAMBIA
MINISTRY OF HOME AFFAIRS**

TABLE OF CONTENTS

FOREWORD / ACKNOWLEDGMENTS	iii
WORKING DEFINITIONS	v
ACRONYMS	vii
CHAPTER ONE: INTRODUCTION	1
CHAPTER TWO: SITUATIONAL ANALYSIS	3
2.1 INTERNATIONAL AND REGIONAL CONTEXT	3
2.2 NATIONAL CONTEXT: TRAFFICKING PATTERNS IN ZAMBIA	4
2.3 PREVENTION AND CONTROL OF HUMAN TRAFFICKING	4
2.3.1 Underlying Causes	5
2.3.2 Public Awareness	6
2.3.3 Research and Data Collection	7
2.3.4 Immigration Control	7
2.3.5 Document/Passport Control	8
2.3.6 Regulation of Employment Agencies and Advertising	8
2.3.7 Adoption Laws, Regulations and Procedures	9
2.3.8 Corruption	9
2.4 PROSECUTION OF TRAFFICKING OFFENCES	10
2.4.1 Criminal Offences	10
2.4.2 Extra-territorial Jurisdiction	11
2.4.3 Organized Crime and Money-Laundering	11
2.4.4 Specialized Anti-Trafficking Units	12
2.4.5 Training/ Human Capacity and Resources	12
2.4.6 Coordination	13
2.4.7 Internal Trafficking	13
2.4.8 Language Barriers	13
2.4.9 Prosecution Challenges	13
2.5 PROTECTION AND CARE OF TRAFFICKED PERSONS	14
2.5.1 Consequences of Trafficking for the Victim	14
2.5.2 Identification of Trafficked Persons	15
2.5.3 Immigration Status of Trafficked Persons	15
2.5.4 Shelter and Other Services	16
2.5.5 Legal Advice and Representation	17
2.5.6 Witness protection	18
2.5.7 Dignity and Privacy in Court Proceedings	18
2.5.8 Compensation/Restitution	19
2.5.9 Repatriation assistance	19

2.5.10	Decriminalization of trafficked persons	20
2.6	MULTI-LATERAL COOPERATION	20
2.7	INSTITUTIONAL FRAMEWORK	20
CHAPTER THREE: VISION, RATIONALE AND GUIDING PRINCIPLES		23
3.1	VISION	23
3.2	RATIONALE	23
3.3	GUIDING PRINCIPLES	24
CHAPTER FOUR: OBJECTIVES AND MEASURES		27
4.1	GOALS	27
4.2	BROAD OBJECTIVES	27
4.3	PREVENTION	27
4.4	PROSECUTION	30
4.5	PROTECTION	33
4.6	MULTI-LATERAL COOPERATION	37
4.7	INSTITUTIONAL CAPACITY AND COORDINATION	37
CHAPTER FIVE: IMPLEMENTATION FRAMEWORK		39
5.1	INSTITUTIONAL ARRANGEMENTS	39
5.1.1	Role of Government	39
5.1.2	Ministry of Home Affairs	39
5.1.3	National Secretariat	40
5.1.4	Role of Other Government Ministries	41
5.1.5	Non-Governmental Stakeholders	42
5.2	LEGAL FRAMEWORK	42
5.3	MONITORING AND EVALUATION	43
5.4	RESOURCE MOBILIZATION AND FINANCING	44

FOREWORD / ACKNOWLEDGMENTS

The National human trafficking policy was developed through a collaborative and consultative process. Workshops were held with stakeholders in Lusaka, Kitwe, and Livingstone in late 2006. Participants included representatives from government ministries, law enforcement and the judiciary, civil society organizations, the International Organization for Migration (IOM) and the International Labour Organization (ILO). We would like to acknowledge the contributions of the workshop participants and others who contributed information and ideas toward the development of this policy, as well as all those who reviewed the draft and provided valuable inputs. We are particularly grateful to the members of the National Coordinating Committee on Trafficking in Persons and the Zambian Law Development Commission for organizing and leading this process.

We would also like to acknowledge the support of our cooperating partner, the United States Government through USAID, who provided financial support for the consultative workshops and the writing of the Policy document.

WORKING DEFINITIONS

Asset forfeiture	Confiscation by the Government of money or property obtained unlawfully or used by criminals to commit crimes
Child	A person under the age of 18
Deception	The intentional use of lies or misleading information
Debt Bondage/ Bonded labor	A practice in which a person is unreasonably and unfairly forced to provide work or services to another person until a debt is repaid
Exploitation	Taking unfair advantage of someone for financial or personal gain
Early marriage	The practice of promising or giving of a child in marriage where the child is below the legal age of consent
Forced labor	Work or services obtained from a person through force, coercion or other circumstances such that the work is not provided voluntarily
Forced marriage	The practice of promising or giving of a girl or woman to another person in marriage where the girl or woman does not have the right to refuse
Human rights	Fundamental freedoms and basic human rights that every person is entitled to in the Constitution of Zambia and international human rights agreements
Human trafficking	The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
Internal trafficking	Human trafficking in which the victim is exploited in the same country from which the victim was recruited
Law enforcement	All government agencies and officers responsible for enforcing the law
Minor	A person under the age of 21 years
Money laundering	Investment or sale of property obtained through illegal activities
Organized crime	A highly-organized association of individuals engaged in repeated criminal activity
Presumed trafficked person	Any person who may reasonably be presumed under the circumstances to be a victim of trafficking
Prohibited Immigrant	Any person who is not allowed to enter or stay in Zambia, or who has entered or stayed in Zambia illegally
Push factors	Circumstances in a person's family, community or country of origin that cause that person to seek opportunities elsewhere
Pull factors	Conditions in another region or country that cause a person to want to go there. Also refers to demand for certain types of labour or services.

Secondary victimization	Additional trauma or harm done to a victim of crime by individuals or the State after the original crime has been committed, usually as a result of insensitive, unfair or unkind treatment of the victim during reporting, investigation or prosecution of the crime.
Slavery	The status or condition of a person over whom any or all of the powers of ownership are exercised
Slavery-like practice	Practices defined in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, including debt bondage, forced marriage, and the delivery of a child to another person by his parent or guardian for exploitation of the child or of the child's labour
Trafficked person	A victim of human trafficking
Vulnerable Witness	A witness in a court proceeding who, because of his or her age, the nature of the testimony, or any other factor, is likely to experience physical, psychological or emotional harm as a result of testifying in court

ACRONYMS

ACC	Anti-Corruption Commission
ARV	Anti-retroviral treatment
CRC	Convention on the Rights of the Child
CBO	Community-based organization
CSD	Community Safety Division (Zambian Police)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COMESA	Common Market for East and Southern Africa
CTOC	United Nations Convention on Transnational Organized Crime
DEC	Drug Enforcement Commission
DPP	Office of the Director of Public Prosecutions
FBO	Faith- based organization
HIV-Aids	Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome
IOM	International Organization for Migration
ILO	International Labour Organization
IPEC	International Programme for Elimination of Child Labour
NGO	Non-governmental Organization
MIDSA	Migration Dialogue for Southern Africa
OVC	Orphans and other Vulnerable Children
SACTAP	Southern Africa Counter-Trafficking Assistance Program
SADC	Southern Africa Development Community
SARPCCO	Southern Africa Regional Police Chiefs Cooperation Organization
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

VSU
ZLDC

Victim Support Unit (Zambian Police)
Zambian Law Development Commission

CHAPTER ONE: INTRODUCTION

Human trafficking is a complex and dynamic global phenomenon involving the trade in human beings for the purpose of exploitation. Trafficking occurs when a person is recruited, sold, or taken from one country, region, or community to another, by means of deception, coercion, force, abuse of power or by taking advantage of the person's vulnerability, in order to exploit his or her labour or services for personal or financial gain. Human trafficking, whether for sexual or non-sexual purposes, is widely recognized as a contemporary form of human slavery and a gross violation of internationally recognized human rights.

The human consequences of trafficking are severe. Traffickers tend to prey on the most vulnerable members of society and target countries or communities where poverty and unemployment are high. In the course of human trafficking, traffickers and "end users" may subject their victims to a wide range of human rights abuses, including physical and sexual violence, sexual exploitation, restricted freedom of movement, forced or bonded labour, and various forms of inhuman and degrading treatment. Many victims of trafficking disappear and never return to their country of origin. Others return sick, injured, emotionally and psychologically traumatized, and/or infected with HIV-Aids.

Human trafficking also poses a serious threat to security and stability. Trans-national trafficking frequently involves illegal migration or migrant smuggling and is increasingly perpetrated by highly organized criminal groups. Profits from human trafficking may be laundered and used to finance other criminal operations. Trafficking also fuels and is facilitated by corruption and complicity at various levels of government.

Although human trafficking has only recently emerged as an issue in Zambia, it appears to be a widespread and growing problem. Many victims of trafficking are nationals of neighboring States transiting through Zambia; others are Zambians themselves. Since 2004, Government has taken several important steps to address the problem of trafficking, including establishing an inter-ministerial committee on human trafficking, amending the Penal Code to include a trafficking offence, and investigating and prosecuting a number of suspected trafficking cases. It has also cooperated with the International Organization for Migration (IOM) and other non-governmental stakeholders to train law enforcement officers and provide assistance to victims of trafficking. In 2005, Zambia acceded to the principal international agreement governing State obligations with respect to human trafficking, the United

Nations' Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking Protocol"). Having acceded to the Protocol, it is now incumbent on Government to domesticate the Protocol's provisions into national law, policy and programmatic strategies.

The National Policy to Combat Human Trafficking reflects Government's commitment to comprehensively address the problem of human trafficking consistent with the Trafficking Protocol. The policy provides long-term guidance and a framework for the development and implementation of comprehensive interventions in the area of trafficking prevention, law enforcement, and victim assistance, through a coordinated, multi-sectoral approach. It also suggests specific measures to strengthen the laws and systems currently in place and to improve stakeholder coordination.

The document is divided into five chapters. Chapter One introduces the problem of human trafficking and the purpose of the national policy. Chapter Two reviews the current situation regarding human trafficking in Zambia and the laws, policies, and programs in place to address various aspects of the problem. The section is organized according to the "3 P's" of anti-trafficking: Prevention, Prosecution, and Protection. It also addresses the cross-cutting issues of multi-lateral cooperation, capacity and coordination. Chapter Three includes the Vision, Rationale and Guiding Principles for the National Policy to Combat Human Trafficking. The objectives of the National Policy are outlined in Chapter Four, along with specific measures to achieve each objective. Chapter Five discusses the legal and institutional framework for implementation of the policy.

CHAPTER TWO: SITUATIONAL ANALYSIS

2.1 INTERNATIONAL AND REGIONAL CONTEXT

Human trafficking is occurring worldwide. Every year, more than half a million people are trafficked across borders from Eastern Europe and developing countries for purposes of exploitation. Many more are trafficked internally for exploitation in their own countries. Victims include men, women and children, lured, abducted or sold into prostitution, sexual servitude, or forced/bonded labour in the domestic, agriculture, construction or manufacturing sectors. Traffickers include individuals, loose networks, and highly organized criminal syndicates. IOM estimates that human trafficking generates an estimated \$12 billion per year in profits for organized crime.

Human trafficking is a relatively new, but serious issue emerging across Southern Africa. By nature a hidden problem, the full extent of human trafficking in the region is not yet known. Lack of research and fear of reporting contribute to this problem. At the same time, however, hundreds of individual cases of human trafficking have been documented in the past few years, and anecdotal evidence is mounting. Given the many barriers to identifying and/or reporting human trafficking, it can reasonably be assumed that the number of trafficking cases identified in the region to date represent only a small percentage of actual cases.

Based on individual cases, it appears that the most common form of trafficking in the region is the trafficking of women and children (both boys and girls) for use in prostitution, pornography, and/or other forms of sexual exploitation. Men, women and children have also been trafficked to other countries, both inside and outside the region, for purposes of labour exploitation.

In addition to cross-border situations, it appears that various forms of human trafficking are also occurring inside national borders. For example, it is relatively common in Southern Africa to recruit children and/or young people from rural areas to work in urban centers, often through promises of well-paid work, schooling, or a “better life.” Although not commonly recognized as “trafficking,” many of these young people end up deceived, exploited and abused in various forms of sexual exploitation or domestic labour, sometimes by acquaintances or members of their own extended families. Debt bondage, child selling, pledging children or females to pay a debt,

forced or early marriage to obtain “bride price,” and other practices also constitute forms of human trafficking in the region.

To varying degrees, human trafficking is a problem that affects all of the countries in the SADC region. Most countries in the SADC region are primarily “source countries” – countries from which victims are recruited or obtained – or “transit countries” – countries through which traffickers transport their victims on their way to other destinations. South Africa is the only country in the region that is primarily a “destination” or “receiving” country for human trafficking, although others, including Zambia, are also destinations to a limited extent. Moreover, because trafficking occurs “internally,” i.e. within the borders of a given country – all countries in the region are to some degree countries of origin, transit and destination and therefore need strategies to combat trafficking and assist victims at all stages of the trafficking process.

2.2 NATIONAL CONTEXT: TRAFFICKING PATTERNS IN ZAMBIA

Like many of its neighbors, Zambia is both a country of origin for cross-border trafficking as well as a transit point for trafficking from other countries to South Africa, Europe, Asia and Australia. In Zambia, most of the trafficking cases prosecuted to date have involved young girls trafficked for sexual exploitation. In other cases, suspected traffickers have been intercepted in transit, without sufficient evidence of the intended purpose or destination of their victims. One such case involved a Congolese woman attempting to cross the border at Chirundu with fourteen children on falsified passports.

Many more suspected cases have been identified by immigration officers and other stakeholders, primarily involving young Zambians being recruited for jobs, marriage or educational opportunities outside the country, or children crossing borders under suspicious circumstances. In a few cases, Zambians have been implicated in cross-border trafficking. One such case involved a Zambian arrested in Zimbabwe attempting to travel with two young Congolese girls on fraudulent passports. Although authorities were not able to prove human trafficking, the evidence seized from the suspect pointed to involvement in a criminal syndicate. At least two Zambians have been prosecuted in Malawi for attempting to “export” Malawian children to Zambia for exploitation on Zambian farms. Zambians have also been accused of sending Zambian children to work illegally on farms in the Democratic Republic of Congo (DRC).

Zambia has also experienced various forms of “internal” trafficking. Most of the known cases were charged under abduction or defilement laws, or handled by the Ministry of Labour as child labour violations. Most recently, a father was convicted of trafficking under section 143 of the Penal Code for attempting to sell his 10-year-old child.

2.3 PREVENTION AND CONTROL OF HUMAN TRAFFICKING

Prevention is the first component of an effective counter-trafficking strategy. Prevention means addressing the root causes of both the supply and demand for trafficked persons, raising awareness of the problem, and ensuring effective

mechanisms to control abuse of documents, immigration, employment recruitment and adoption systems.

2.3.1 Underlying Causes

Human traffickers tend to target people in countries or regions where socio-economic conditions are difficult and opportunities for work or education limited. These underlying conditions create a desire among target populations to migrate to find work or a “better life” through education, adoption or marriage, and increase the risk of being trafficked. Women and girls are particularly vulnerable, due to lack of opportunities at home, as are children living in poverty or without adequate family support.

Adding to the risk factor of poverty, the HIV/AIDS pandemic has substantially increased the vulnerability of families, and particularly children. The HIV/AIDS pandemic is cited as a major cause of the current OVC crisis in the region and the dramatic increase in the number of street children and child headed households.

Gender inequality also plays a role in promoting trafficking of women and children. Unequal access to education, training, employment, land and credit, discrimination with respect to marriage, family, and property, gender-based violence, early marriage and early childbearing all contribute to the economic and social vulnerability of women and their families. Societal and cultural attitudes that consider women and girls as inferior or require them to be submissive also create a climate in which the practice of trafficking is likely to flourish.

2.3.1.1 Root causes in Zambia

Socio-economic conditions in Zambia have created an environment that is conducive to human trafficking. While the actual causes of trafficking in Zambia have not yet been empirically studied, various factors are known to contribute to increased vulnerability for Zambians in general, and women and children in particular. These include:

- i. Poverty
- ii. Unemployment (especially among women and youth)
- iii. Low wages/ poor working conditions
- iv. Job insecurity/casualization of labour
- v. HIV-Aids
- vi. Disintegration of families/child-headed households/“streetism”
- vii. Gender inequality and discrimination
- viii. Traditional practices such as forced and/or early marriages, payment of “bride price,” pledging women or children to pay debts, “placement” of children with another family, selling or hiring out children or wives for prostitution or commercial labour, and “property grabbing”
- ix. Lack of compulsory education

- x. Inadequate birth registration
- xi. Work restrictions/social exclusion of refugees

Demand for commercial sex, pornography, and inexpensive, exploitable labour in Zambia also play a role by contributing to internal trafficking and the “import” of child labour from neighboring states.

2.3.1.2 Impact of conditions in neighboring countries on Zambia

As a trans-national and regional issue, underlying problems in neighboring countries, such as poverty, political instability, and conflict, also contribute greatly to the problem of human trafficking in Zambia. Citizens from neighboring countries, including refugees, migrate to or pass through Zambia in search of stability and economic opportunities. Some may be engaging in human trafficking; others are victims of trafficking or at risk of trafficking. Foreign children and refugees appear to be particularly vulnerable.

In addition to “push factors,” various “pull factors” in countries of destination create demand and encourage the trade in human beings. These include:

- i. steady demand for prostitutes of both sexes, especially young, foreign, and/or new recruits who are perceived as more desirable and/or less likely to be infected with HIV
- ii. a strong market for pornography, particularly for distribution on the internet
- iii. demand for trafficked women and children as “wives” for domestic servitude and/or personal sexual gratification
- iv. demand for cheap and exploitable labour, particularly in certain employment sectors, and
- v. the low risk, high profit nature of trafficking for organized crime.

2.3.2 Awareness

Public awareness of the problem of human trafficking is generally low in Zambia. Those who have heard of human trafficking tend to think of Zambia primarily as a transit point for trafficking from other countries. Few are aware of the extent to which traffickers also target Zambian nationals.

Most people in Zambia have not been sensitized to the dangers of human trafficking and are unable to protect themselves or their family members from the variety of recruitment tactics used by human traffickers. Young people are understandably susceptible to attractive offers for good jobs, scholarships or even marriages that bring a promise of a better life, not knowing that these offers may be false or misleading. Parents or other caregivers may also seek work or other opportunities for children without realizing that they are putting their children at risk of exploitation and abuse.

Zambia has not yet implemented a coordinated or large-scale education, communication, or public information strategy to increase awareness of human trafficking. To date, public information measures have been fairly limited, and undertaken primarily by IOM and the International Labour Organization (ILO).

At present, there is also no formal system or structure in place to help individuals verify employment or scholarship offers, particularly those outside of Zambia. The Ministry of Labour has, on occasion, investigated foreign offers of employment when specifically requested, with assistance from the Ministry of Foreign Affairs. The system is informal and ad hoc, however, and not easily accessed from outside Lusaka.

2.3.3 Research and Data Collection

A fuller understanding the problem of human trafficking in Zambia is necessary to inform an effective prevention and law enforcement strategy. The more that is known about traffickers, trafficking patterns, recruitment practices, and trafficking networks, as well as about the background and experiences of victims themselves, the better Government will be able to respond to this complex problem.

Very little research has been conducted to date to document the nature or incidence of human trafficking in Zambia. Most of the information known at this stage is based on regional patterns or individual cases relayed by law enforcement officers, IOM, and local non-governmental service providers. Few case studies have been fully or systematically documented, and information from provincial and/or field offices has not been collected or compiled at the national level. There is also no system in place to effectively collect or report data on trafficking or suspected trafficking cases handled by law enforcement.

Two studies are currently underway to assess the problem of human trafficking in Zambia, including a baseline survey of child trafficking conducted by the ILO-IPEC program. Results from these studies are not yet available.

2.3.4 Immigration Control

Zambia shares borders with eight different countries. Many of these are open borders without physical barriers or border controls. Although Zambia's immigration laws are generally adequate, immigration efforts are substantially hindered by porous borders, inadequate facilities and equipment, lack of computerization, lack of resources, and inadequate staffing. Except at Lusaka International Airport where passport control systems have been computerized, immigration officers do not have an effective method by which to track the movements of travelers across borders, such as how often they pass through or whether they are traveling with children. In such an environment, it is extremely difficult to prevent human traffickers and their victims from entering or exiting the country.

Another problem is the lack of regional standards or protocols regarding the cross-border migration of children and youth under age 21. In an effort to reduce child trafficking, the Department of Immigration has recently issued instructions to immigration officers requiring children traveling across borders to provide

authorization from a parent or guardian. While this policy has enabled officers to turn back a few suspected child traffickers at the border, it is unlikely to be effective in the absence of standardized forms or mechanisms to verify the authenticity of authorization documents.

2.3.5 Document/Passport Control

Efforts to combat trafficking in Zambia are also hindered by inadequate document and passport controls. Certain features of the current Zambian passports are problematic, including the endorsement of children's names without photographs, and the use of insertable photographs. A process is currently underway to roll out machine-readable passports that are significantly more difficult to alter or replicate. This will improve the passport control situation in Zambia. However, challenges will remain as long as the old passports are in circulation. Abuses have also been reported with respect to the issuance of passports to minors. Under new measures, passport offices now require a minor's parent or guardian to appear in person to collect the minor's passport and provide proof of identity. Parents are also being encouraged to obtain individual passports for their children instead of relying on endorsements. Finally, numerous weaknesses in the issuance of birth registration and identity documents have been identified. These include the use of affidavits in lieu of birth certificates, which though necessary under present circumstances, are easier to falsify. In addition, corruption in some registration offices remains a persistent problem.

2.3.6 Regulation of Employment Agencies and Advertising

Advertisements and employment agencies offering employment, educational, and marriage opportunities abroad have proliferated across Zambia. Many of these are for opportunities outside the country. At present there are no regulatory agencies mandated with monitoring the content of advertising and no laws to regulate or hold advertisers accountable for deceptive or unethical practices. Moreover, neither the labour law nor the Penal Code contains criminal provisions that could be used to prosecute deceptive recruitment or exploitation of Zambian workers abroad.

Under current law, employment recruitment agencies must be registered with the Ministry of Labour, and the Ministry has the power to investigate agencies before issuing or renewing a license. The law also states that employment agencies must submit returns to the Ministry indicating the number of workers placed and other information. In practice, however, the requirements for registration are minimal, and subsequent inspection and oversight of agencies by the Ministry is minimal to non-existent. In part, this is due to under-staffing and lack of resources in the Ministry to monitor returns and carry out inspections. However, the situation is clearly aggravated by the absence of laws regulating recruitment practices.

A related problem is the large number of unlicensed employment recruitment agencies operating illegally in Zambia. Labour officials believe that the practice has mushroomed in the last few years. Without licensing, the Ministry cannot monitor the activities of these agencies. A few cases have emerged recently in which unlicensed agencies have recruited Zambians for work outside the country. Upon investigation

by the Ministry of Labour and the Ministry of Foreign Affairs, these offers have turned out to be false, or the employers non-existent.

Zambian employment law used to include strict provisions relating to foreign employment, including a requirement that all contracts be government-approved. These were repealed to reduce red tape and bureaucratic obstacles to Zambians seeking opportunities abroad. Although section 37 of the Employment Act includes provisions to enable a foreign contract to be “certified” by the Ministry of Labour (and even for a bond or security to be paid to guarantee payment under the contract) these provisions are voluntary and rarely used in practice.

2.3.7 Adoption laws, regulations and procedures

Adoption is another way that traffickers can obtain children and young people for purposes of exploitation. Traffickers or their agents may befriend a child or his or her family, and then offer the child the opportunity for education or a better life through adoption. Others may obtain children through orphanages or other institutions.

The current adoption system in Zambia does not provide enough checks on adoption to ensure that all adoptions, whether international or within Zambia, are legitimate and in the best interest of the child. Implementation and enforcement of existing procedures by Social Welfare is severely hindered by the lack of adequate staffing and resources. As a result, many “short cuts” are taken in practice, often without the knowledge of the judicial officer who approves the adoption order. Although both the high courts and subordinate courts have jurisdiction to approve adoptions, most adoptions are handled by the subordinate courts where the process is quicker and reportedly subjected to less intensive scrutiny.

The legal framework for adoption may also be inadequate in light of human trafficking. The Adoption Act (Cap. 43) includes some criminal offences relating to adoption that could be applied in trafficking cases. These are rarely prosecuted, however, and the penalties associated with such offences are probably too low to deter child trafficking and related abuses.

2.3.8 Corruption

Public corruption, particularly with respect to the obtaining of registration and travel documents, immigration and border control, criminal justice, and adoption procedures, is well known to contribute to human trafficking. The perception in Zambia is that public corruption is widespread, although it has not yet been studied in relation to human trafficking per se.

Zambia has taken several important steps to fight public corruption in recent years, including through establishment of the Anti-Corruption Commission (ACC). The ACC’s mandate is to investigate and prosecute corrupt practices, and to develop and implement strategies and mechanisms to prevent corruption. Research on corruption and implementation of anti-corruption prevention programs in line ministries and field offices has been inadequate to date. However, some new measures have been planned to address corruption in the Immigration and National Registry Departments, in conjunction with the Millennium Challenge programme.

2.4 INVESTIGATION AND PROSECUTION OF TRAFFICKING OFFENCES

The second essential element of an effective anti-trafficking strategy is effective law enforcement, from investigation to prosecution and sentencing.

2.4.1 Criminal Offences

One of the major obstacles to prosecution of human trafficking is the inadequacy of the current legal framework with respect to trafficking crimes. Despite recent amendments to the Penal Code, police and prosecutors feel handicapped by the lack of a strong and clearly defined trafficking offence.

In 2005, Zambia enacted section 143 of the Penal Code, which makes it unlawful for any person:

“to sell or traffick [sic] in a child or other person for any purpose or in any form...”

The offence carries a minimum penalty of “not less than twenty years” imprisonment, or up to life imprisonment, if the offence is committed “for the purpose of causing the child or person to be unlawfully and carnally known by any other person.” Prior to enactment of section 143, prosecutors generally relied on immigration offences, abduction or procurement to prosecute human traffickers, with very limited success.

Although Zambia is one of the few countries in the region to enact a distinct offence of human trafficking, the current provision has several weaknesses. The main weakness is that the new provision does not define the term “traffick” or “trafficking” or clearly set out the elements of the offence. As such, it is very difficult to enforce the law or to ensure that the law meets the requirements of the Trafficking Protocol. Other aspects of the law could also need strengthening. For example, it is not clear that companies and other legal associations could be prosecuted for trafficking under the current law, as the sentence does not include the possibility of a fine or allow prosecution of corporate officers for offences committed by the corporation. The minimum sentence may also present challenges relating to the jurisdiction of the subordinate courts to hear trafficking matters. Concerns have also been raised that the current sentencing framework does not allow sufficient judicial discretion to apply less severe penalties in appropriate cases. Only one case has been prosecuted under section 143 to date, which involved child selling. Application of the law in a typical trafficking scenario has not yet been tested.

Aside from section 143, Zambian law contains various other provisions that could be strengthened to increase their effectiveness against human trafficking. These include various provisions in the Penal Code, the Immigration and Deportation Act, and the Employment of Young Persons and Children Act. At present, there is also an apparent conflict between sections 4B and 17B of the Employment of Young Persons and Children Act (relating to “worst forms of child labour”) and the new section 143 of the Penal Code with respect to the penalty for child trafficking. Review and harmonization of these two laws is needed to resolve the current conflict.

2.4.2 Extra-territorial jurisdiction

Extra-territorial jurisdiction enables States to prosecute and try offences committed partly or wholly outside national territory. Since trafficking is often a cross-border crime, expansive provisions relating to extra-territorial jurisdiction can help strengthen the State's capacity to reach traffickers and the criminal syndicates behind them.

Under current law, Zambian courts have jurisdiction over all criminal offences committed within Zambia, as well as Penal Code offences committed "partly inside and partly outside" Zambian territory (Penal Code section 6). In addition, Zambian law (section 6(1)) allows courts to exercise jurisdiction over Zambian citizens who do any act outside Zambia, which, if wholly done within Zambia, would constitute an offence under the Penal Code. Although Zambia's jurisdiction is broader than that of some other countries in the region, it is not broad enough to reach all cross-border crimes involving Zambia. At present it would not cover offences committed against Zambians outside Zambia, unless committed by a Zambian citizen. Zambia could also not reach non-citizens who organized, incited, or conspired to commit crimes in Zambia from outside the country. Finally, Zambia's jurisdiction would not extend to any immigration, adoption or labour law offences committed partly or wholly outside Zambia –even by a citizen -- because the Penal Code's extra-territorial jurisdiction provisions only apply to Penal Code offences.

2.4.3 Organized Crime and Money Laundering

Zambian law does not currently contain any provisions relating specifically to organized crime. Under current law, organized criminals are prosecuted under the common purpose doctrine for "predicate offences" such as drug trafficking, passport fraud, and vehicle theft. These are contained in a variety of different enactments. Organized criminals may also be prosecuted for money laundering or corruption under the Money Laundering Act or the Anti-Corruption Commission Act. There is no consensus among law enforcement at present as to whether a specific organized crime law is needed; however most agree that the concept of organized crime should be introduced more explicitly in the law, such as by defining the term "organized crime" and increasing penalties for offences committed by organized criminal groups.

Zambia does not have a specialized umbrella agency tasked with investigating and prosecuting all forms of trans-national "organized crime." Different law enforcement divisions are responsible for investigating different predicate offences -- i.e. drug trafficking and money laundering by the Drug Enforcement Commission (DEC), vehicle theft by Police/Interpol, goods smuggling by Customs, migrant smuggling by Immigration, and corruption by the ACC. Although these divisions sometimes refer cases to another division when a case falls outside their mandate – coordination and cooperation between the different divisions is generally very weak. At present, human trafficking cases are handled primarily by the Immigration Department or the Victim Support Unit (VSU) of the Zambian Police. Neither of these agencies has the resources, capacity or mandate, however, to conduct complex, trans-national investigations of human trafficking syndicates.

Zambia already has in place a legal framework to combat corruption and money-laundering and to enable confiscation of criminal proceeds (asset forfeiture). Amendments to strengthen the Anti-Corruption Commission Act are currently being developed. These provisions and mechanisms have not yet been used to combat human trafficking, but could be used by law enforcement for this purpose, where a corruption or money-laundering offence has been committed. The challenge is to ensure sufficient coordination and cooperation between the relevant law enforcement agencies to ensure that all relevant offences are investigated in trafficking cases and asset forfeiture initiated as appropriate. The current framework also lacks adequate provisions to enable seizure and confiscation of property used in the commission of crime (as opposed to criminal proceeds) and does not allow for civil forfeiture. Provisions such as these have been used successfully elsewhere to combat human trafficking and generate additional resources for anti-trafficking programs.

2.4.4 Specialized Anti-Trafficking Units

The Community Service Division (CSD) of the Zambian Police recently established a small, specialized unit at Police Headquarters to investigate sexual offences and human trafficking cases. The Unit currently consists of four female officers working in conjunction with the VSU. Aside from this unit, Zambian law enforcement does not have any specialized counter-trafficking officers or units. Interpol nominally maintains a “trafficking desk,” but the officers have not been actively involved in investigating trafficking cases. As such, the Immigration Department and VSU remain the key players on human trafficking at present.

2.4.5 Training/Human Capacity and Resources

Anti-trafficking training for law enforcement has been limited so far. Police and immigration officers have attended two-day training workshops for law enforcement officers on human trafficking conducted by IOM. Trafficking is not yet covered in the regular training curriculum for new recruits, however, and most officers have not received in-service training. IOM is currently working with the Ministry of Home Affairs to develop an anti-trafficking curriculum for the Police College.

Resources to conduct human trafficking investigations are also very limited. For example, most police stations do not have the capacity to mount a surveillance, although in many cases this may be the only way to collect evidence sufficient to secure a conviction. Moreover, neither of the departments most involved in human trafficking cases to date – Immigration and VSU – have adequate staffing, equipment or financial resources to conduct complex investigations, particularly in cross-border cases. As a result, they are more likely to fall back on a straightforward charge such as passport fraud, rather than pursuing the more difficult trafficking case.

Finally, very few law enforcement officers are receiving adequate, up-to-date information on the laws available to them to combat human trafficking. Information on relevant new provisions and amendments is generally not reaching the officers in the field. Nor are officers receiving adequate training on how to collect evidence to support trafficking or trafficking-related charges.

2.4.6 Coordination

Lack of effective coordination between various branches of law enforcement is likely to hinder investigation of human trafficking. At present, most of the various branches tend to work independently according to their particular mandate, without significant cooperation, communication or consultation with other divisions. In general, it appears that effective coordination is hampered by the lack of mechanisms to facilitate coordination, as well as attitudes and perceptions regarding each branch's particular jurisdiction or mandate. Effective inter-agency coordination is also difficult in light of inadequate staffing and resources.

2.4.7 Internal trafficking

Most attention paid to trafficking to date has focused on cross-border trafficking, especially of children. In part this is due to the fact that Immigration has received more training on the issue of trafficking than other law enforcement branches, and consequently has detected more cases. Concern has been expressed, however, that internal forms of human trafficking are not receiving the same level of attention. Despite the strengthening of criminal laws relating to sexual exploitation, for example, very few cases of child prostitution or pornography have been investigated. Likewise, very few child labour cases have been prosecuted as criminal offences.

2.4.8 Language barriers

The ability of law enforcement to detect and investigate human trafficking is also hindered by lack of interpreters. Immigration officers are often unable to conduct proper interviews at immigration control of either suspected traffickers or suspected victims because of language barriers. Lack of interpreters also makes it more difficult for immigration or police officers to identify victims of trafficking or to obtain information that may be useful to the investigation. In some cases, immigration or police officers are able to locate unofficial interpreters to assist in interrogation; however, this is only available on an uneven, ad hoc basis, and may be ineffective, particularly with frightened or traumatized victims.

2.4.9 Challenges facing prosecutors

Prosecutors currently face a number of practical difficulties in prosecuting human trafficking. Without training on the subject, law enforcement officers do not necessarily recognize situations as trafficking and collect evidence to support such a charge. Officers may also not have sufficient training or knowledge to know how to charge suspects with trafficking using existing legal provisions and therefore only charge suspects with less serious offences such as immigration fraud.

Second, trafficking cases intercepted in transit, are extremely difficult to prosecute, even with a human trafficking law. This is because there is rarely sufficient evidence to prove that the purpose behind the lawful or unlawful movement of the intended victims is to subject them to exploitation. Obtaining such evidence would require law enforcement to conduct cross-border investigations, which can be costly and time-consuming, and which generally require effective cooperation from counterparts in the countries of origin and destination.

Bail also presents numerous challenges for prosecutors, particularly with respect to foreign nationals. In almost every trafficking case involving non-Zambians, defendants who were awarded bail have failed to appear in court. Although trafficking is a capital offence, it is not an offence for which bail cannot be granted under section 123 of the Criminal Procedure Code (CAP 88).

Finally, prosecution of trafficking cases may be hindered by the lack of witnesses. Without the capacity to provide victims with adequate protection, few are willing to come forward to cooperate with law enforcement. Victims may also be too traumatized, ashamed, or frightened to testify against their traffickers in open court. Availability of witnesses is most problematic in cross-border cases where the victim is not legally resident. If a victim is deported as a prohibited immigrant or quickly repatriated, that victim will not be available to assist the police in their investigation or to testify as a witness.

2.5 PROTECTION AND CARE OF TRAFFICKED PERSONS

The third element of an effective strategy to combat trafficking is protection and assistance to victims. Effective protection requires a broad range of legal and non-legal measures implemented in close cooperation with non-governmental and community-based organizations. Additional measures may be required in the case of children, who have special rights and needs and whose best interest must be given paramount consideration.

2.5.1 Consequences of trafficking for the victim

When a person is trafficked, the victim's basic human rights are repeatedly violated. The victim may be raped, threatened, beaten, confined, and/or subjected to a wide range of sexual, physical and emotional exploitation and abuse. If a victim of trafficking does manage to escape from his or her situation, or if he or she is discovered or intercepted by police, the victim may be subjected to further trauma at the hands of state authorities who either do not identify the victim as a trafficked person in need of assistance, or who do not have systems or procedures in place to enable them to provide assistance. In the absence of victim protection policies and referral mechanisms, trafficked persons are more likely to be arrested, detained, prosecuted and/or deported as criminals or "prohibited immigrants" than to be provided with protection or basic services.

Even when freed from their traffickers, the physical and psychological consequences relating to the abuse and trauma experienced continue to affect victims' well-being. Victims often present with medical and psychological problems, drug addictions or HIV-AIDS. Many victims face intimidation, retaliation or re-trafficking, particularly where organized crime is involved. Stigmatization is another frequent consequence. Families may reject returning victims for various reasons, jeopardizing or preventing reintegration into their home communities.

Although not yet subjected to exploitation, trafficked persons intercepted in transit also need protection to avoid being returned to circumstances likely to result in "re-trafficking." A victim may have been picked up off the street, sent away or sold by a

family member, or may have already been engaging in prostitution or other hazardous work. Moreover, a trafficker who has invested time and money to recruit and transport a victim will not be easily deterred from attempting to traffic the victim again. Simply returning a victim—particularly a child—to his or her country or community without appropriate investigation and/or intervention may leave the victim in an extremely vulnerable situation.

2.5.2 Identification of trafficked persons

Identification of trafficked persons as victims remains a key obstacle to providing assistance or enabling victims to exercise their legal rights. Identifying trafficked persons can be very difficult for law enforcement as the crime is usually hidden and the victims too afraid or ashamed to self-identify without support and appropriate intervention. At the recruitment or transit stage, the victim may not even suspect that he or she is being trafficked, and is therefore unlikely to offer much assistance.

Strengthening the capacity of stakeholders to identify victims of trafficking is a prerequisite to effective protection. In Zambia to date, IOM has provided some training for law enforcement officers and non-governmental organizations (NGOs) to help them identify possible victims of human trafficking. Broader efforts are required. A trafficked person's first point of contact may be with any number of stakeholders – labour inspectors, police, prison officials, Zambian missions abroad, social workers, medical service providers, churches or NGOs. All of these should be able to identify suspected or likely trafficked persons and refer them to assistance and protective services.

2.5.3 Immigration status of trafficked person

Victims of human trafficking in Zambia (whether trafficked to Zambia or intercepted in transit) may not have legal status if they have entered or stayed in Zambia illegally, worked without a permit, or engaged in certain illegal activities such as prostitution. Under Zambian law, any such person is considered a “prohibited immigrant” subject to arrest, detention and deportation. Once a person has been declared a prohibited immigrant, immigration officers are required by law to deport the person “at the first reasonable opportunity,” unless the person has been granted a temporary permit. Regularizing the immigration status of victims is thus necessary to prevent deportation, to give authorities time to assess the victims' situation, and to enable the victims to access essential services. It may also be necessary to enable victims of trafficking to participate in investigations and/or criminal proceedings, or to bring civil claims for compensation.

Before 2005, foreign victims of trafficking were most likely turned away at the border or deported under the Immigration and Deportation Act without being identified as trafficked persons. Some may have been charged with immigration offences, fined or confined to prison. Under the present system, identified victims (especially children) are more likely to be referred to shelters while their cases are investigated and repatriation arranged. However, the tendency is still to arrange for repatriation as quickly as possible without sufficient regard for the victim's safety or need for longer-term care and/or services.

At present, Zambia does not have a law that specifically permits a victim of trafficking to avoid detention and deportation as a prohibited immigrant if he or she is found in the country illegally. However, the law does contain a general provision under section 17 of the Immigration and Deportation Act that allows immigration officers to issue a temporary permit to a prohibited immigrant under certain conditions. Under current regulations, a prohibited immigrant is normally required to pay a substantial security as well as a fee to obtain a temporary permit. The permit is also limited to 30 days unless the Chief Immigration Officer approves a longer period. No temporary permits have ever been issued to victims of trafficking in Zambia to date, and most immigration officers are not aware that they could be used for this purpose. With a few modifications, however, this existing provision could be used effectively to regularize the status of trafficked persons while in Zambia. The law also gives the Minister of Home Affairs authority to direct Immigration to issue a temporary permit to any person, to exempt any person from “prohibited person” status, and to waive a statutory fee where necessary.

2.5.4 Shelter and other services

When a trafficked person is identified, there is an immediate need to provide that person with temporary shelter in a safe place. Depending on their individual needs and circumstances, victims of trafficking may also need to access various types of services. These include basic material support (food, clothing), medical care, psycho-social counseling, legal advice, voluntary testing and counseling for HIV (“VTC”), family or community reintegration services, drug-rehabilitation, education, vocational training, and/or repatriation assistance.

Shelters and services for victims of trafficking in Zambia are limited, and provided primarily by IOM and local NGOs. Challenges include the severe shortage of shelter and other services in rural areas and near international borders, lack of shelters for adults and older boys, insufficient linkages between service providers and law enforcement, lack of resources, language barriers, legal restrictions on providing assistance to “prohibited immigrants,” and security concerns. Access to legal representation and advice is also very limited.

The Government of Zambia does not currently have a national program in place to assist victims of trafficking. In previous cases, the government has worked closely with international organizations and local NGOs on an “ad hoc” basis to provide emergency shelter and services to trafficked persons, particularly children. The Ministry of Community Development and Social Services does not operate any shelters in Zambia, and relies instead on accredited non-governmental service providers to provide safe shelter for children under its care. The Ministry provides limited financial support to these organizations to help pay for the children’s support. It does not presently provide assistance to adult victims of trafficking.

Despite limited sheltering options, there appears to be a good referral network among NGOs in Zambia. IOM is currently working to building a network of potential shelter and service providers in Zambia for victims of human trafficking, and to provide NGOs with training on the special needs of victims of trafficking.

Under current conditions, Government does not have the resources or capacity to provide dedicated shelters or services for victims of human trafficking. However, it can work with churches and other organizations to provide these services and to help victims access available services. Government can also ensure that services provided to the general public – such as medical care at public hospitals and clinics, legal aid, and public education or training – are afforded to victims of trafficking, regardless of their nationality or immigration status, and that official documents or government-provided services are provided to victims free of charge. At present, most government-funded services are only available to Zambian citizens or permanent residents, and would not be accessible to foreign victims of trafficking.

Finally, Government's role in protecting the best interests of child victims of trafficking also needs strengthening. Social Welfare is normally informed whenever a trafficked child is identified inside Zambia, and a social worker assigned to the case. At present, however, Social Welfare does not have the capacity to carefully monitor the quality of services provided to children under its care, to participate actively in decisions affecting the child, or to investigate the circumstances of trafficked children prior to repatriation.

2.5.5 Legal advice and representation

Legal issues arise for victims of trafficking at various stages. In order to exercise their legal rights and seek redress against their traffickers, victims of trafficking need to be informed of their rights and have the opportunity to participate in criminal and civil proceedings. Victims who have been arrested or detained on immigration or other criminal charges may need access to legal advice and/or representation on an urgent basis to avoid prosecution and/or deportation.

Legal assistance is rarely afforded to victims of trafficking in Zambia at present. If a trafficked person is arrested or detained for an immigration violation or criminal offence, he or she would not receive legal advice under the current system unless he or she had access to private counsel. Because of limited capacity and resources, government Legal Aid is only provided in practice to defendants in High Court and Supreme Court matters.

There is currently no initiative to provide free Legal Aid to victims of trafficking. If a victim of trafficking were identified as such by authorities or if the victim sought assistance from an NGO or other stakeholder, the victim could be referred for legal advice to the Legal Aid Clinic for Women or other non-governmental organizations providing legal assistance to indigent clients. Capacity and resources permitting, organizations such as these could potentially be brought on board to advise victims on their options and represent them in civil claims for compensation. Legal resources are very limited, however, and few legal aid organizations are available outside the major cities.

Victims of trafficking who appear in court as witnesses in criminal matters are not parties to the proceeding and are not entitled to have their own legal representation. It is the prosecutor's role to represent the State's interest, which may or may not converge with that of the victim. The victim has an opportunity to appear as a witness and to testify in court. During testimony he or she may have an opportunity to

express views and concerns, but this is largely up to the prosecutor. The prosecutor also has discretion to submit a written statement by the victim in applications to oppose bail or with respect to sentencing, but the victim does not have a “right” in the current system to have his or her views heard and considered by the Court.

In cases before the Juvenile Court, the State may appoint a legal representative to represent the interests of the child. This procedure only applies to child defendants, however, not children testifying as witnesses.

2.5.6 Witness Protection

The testimony of victims of human trafficking in criminal proceedings against perpetrators is of crucial importance. However, such testimony often involves severe stress and danger to the witness. The creation of a mechanism for the protection of witnesses is important both for to protect the victim’s personal safety and to gain his or her cooperation as a witness.

Zambia does not currently have a statutory witness protection scheme or a formal system for witness protection. In sensitive cases, police do provide some level of protection, for example by hiding witnesses before or during judicial proceedings. Police protection is generally only available in exceptional circumstances, however, and ends when the trial is over.

2.5.7 Dignity and privacy in court proceedings

An important aspect of witness protection involves protecting witnesses from further mental distress during or as a result of their experience in court proceedings. Since many victims are already traumatized, instituting procedural safeguards helps protect the victim from “secondary victimization” in court and may also lead to better witness testimony.

Procedural protections for witnesses in criminal proceedings are very limited under Zambian law. The Juveniles Act provides some protection for juvenile offenders and “children in need of care,” such as appointing a social worker or probation officer to accompany the child and clearing the court –however, none of these protections apply to child witnesses in criminal proceedings. In exceptional cases, magistrates may clear the court during the testimony of a child witness, or hear the child’s testimony in chambers. This is not normally the case, however, even in sexual offence cases where giving testimony in open court is exceptionally difficult. The child witness may also be subjected to direct cross-examination by the defendant or his or her lawyer in a manner that is inappropriate or harmful to the child.

Zambian law does not currently make special provision for vulnerable adult witnesses, even in sexual offence cases. A prosecutor may apply to the court to have the testimony heard in camera, but permission is discretionary and rarely granted in practice.

2.5.8 Compensation/restitution

Victims of trafficking frequently suffer serious harm as a result of their experience. Damages can include physical, psychological and emotional harm, material losses, unpaid wages, and costs associated with their repatriation, care and recovery. States have a duty under international law to provide victims of trafficking with an opportunity to seek compensation and legal redress from their traffickers. Compensation payments are a form of justice that can have a positive effect on the victim's ability to come to terms with what they have experienced. Such payments also have a restorative and preventive effect, since they allow victims to build a new life for themselves and reduce the risk that they will be trafficked again.

At present there are few practical mechanisms available in Zambia to allow victims of trafficking to seek compensation and/or restitution from their traffickers. In cases where a trafficker is tried and convicted for a criminal offence, Section 175 of the Criminal Procedure Code allows the court, on application by the prosecutor, to order a convicted defendant to pay compensation "to any person injured by his offence." Injury is defined as "any material loss or personal injury recoverable in a civil suit." In practice this provision is rarely used, however, in part because victims are not aware of the provision, and in part because the amount the Court can award under the statute is extremely small.

A victim may also seek compensation through a separate civil claim. This is not a practical option in most cases, however, as it requires the victim to obtain legal representation and entails a lengthy and expensive process. If the victim was exploited in Zambia, it might also be possible for the victim to seek compensation for unpaid wages under the labour law. This remedy would not be available in most trafficking cases, however, as labour law protections do not apply to illegal foreign workers, victims of sexual exploitation, or informal sector employment.

2.5.9 Repatriation Assistance

Whether discovered in the country of destination or in transit, trafficked persons need assistance to return to their country or community safely without retaliation or the risk of being re-trafficked. The victim may need transport, new identity or travel documents, someone to receive or escort them, temporary shelter, and/or reintegration assistance.

At present, Zambian missions abroad are responsible for verifying the identity and nationality of Zambians without proper documents and to arrange necessary travel documents to allow them to return to Zambia. However, the missions do not have the capacity or resources to transport a Zambian national back to Zambia, and no legal duty to do so. There is also no government system in place to receive and/or counsel Zambian nationals who have been deported from abroad to determine whether they have been victims of trafficking or to refer them to available services.

A particular challenge arises when a suspected victim of trafficking is detected at or near the border before he or she has legally entered Zambia. If false documents or other irregularities are discovered, the suspected victim will be denied entry and sent back (often with the suspected trafficker who is accompanying him or her). In a few

cases, Zambian immigration officers have personally escorted children back across the border and alerted their immigration counterparts to the situation. Even in these cases, however, it is not known whether the other country took appropriate steps to investigate the suspected trafficker or protect the victims from re-trafficking.

In the case of the Congolese children intercepted inside Zambia, the Government worked with IOM and local NGOs to provide shelter and protection to the presumed victims, and coordinated with the government of the DRC to arrange the children's repatriation. A Zambian police officer escorted the children to the DRC, where they were handed over to Congolese authorities. The Ministry of Home Affairs handled the repatriation as an administrative matter, as current law does not provide for repatriations outside the regular deportation scheme.

2.5.10 Decriminalization of trafficked persons

A person who has been trafficked often finds him or herself in a precarious legal situation, having most likely violated certain immigration or criminal laws in the course of being trafficked. Normally, sanctions would apply to the victim of trafficking due to his or her illegal status or participation in illegal activities such as prostitution. In the past, adult victims of trafficking have been imprisoned in Zambia for immigration offences because there was no policy to identify them and protect them from prosecution.

2.6 MULTI-LATERAL COOPERATION

Human trafficking is a global and regional problem that, to varying degrees, affects every country in the Southern Africa region. Because it often occurs trans-nationally, combating human trafficking requires effective regional cooperation, harmonization of laws, and joint law enforcement initiatives. At present, regional cooperation around human trafficking is limited and generally ad hoc. The challenge of human trafficking has been raised in regional forums such as the Southern Africa Regional Police Chiefs Cooperation Organization (SARPCCO) and the Migration Dialogue for Southern Africa (MIDSA), as well as regional meetings and conferences sponsored by IOM and the UN Office of Drugs and Crime (UNODC). These have not yet resulted in concrete regional initiatives to combat human trafficking. Efforts to develop and enact anti-trafficking laws have also proceeded in various countries in the region without sufficient coordination to ensure effective harmonization.

2.7 INSTITUTIONAL FRAMEWORK

In 2005, Government formed an inter-agency task force to address the problem of human trafficking under the Ministry of Home Affairs, the National Technical Committee on Trafficking in Persons ("National Committee"). The National Committee is chaired by a representative of the Ministry of Home Affairs, and includes representatives from a wide range of government ministries and departments, including Ministry of Justice, Department of Immigration, Zambian Police Service (Victim Support Unit), Zambian Law Development Commission, Ministry of Labour and Social Security, Ministry of Community Development and Social Services, Department of National Registration, Passport and Citizenship, Ministry of Health, Ministry of Sport, Youth and Child Development, Cabinet (Gender

and Development Division), Ministry of Education, Ministry of Foreign Affairs, Drug Enforcement Commission, and Anti-Corruption Commission. The National Committee developed terms of reference and a preliminary action plan, but its ability to implement the plan has been hindered by lack of capacity, information, human and financial resources. Participation on the National Committee has been uneven, with some agencies rarely attending meetings or sending different representatives each time. For all representatives, including the Chairperson, participation on the National Committee is taken in addition to normal functions.

As an inter-ministerial grouping, the structure of the Committee also leaves out important stakeholders such as international and non-governmental organizations. While the National Committee does periodically consult with non-governmental stakeholders, creating stronger linkages between Government and other stakeholders requires a more effective and structured mechanism for regular and ongoing communication.

CHAPTER THREE: VISION, RATIONALE AND GUIDING PRINCIPLES

3.1 VISION OF THE POLICY

The vision of the National Policy to Combat Human Trafficking is to eradicate all forms of human trafficking from, through, to, and within Zambia while providing adequate and appropriate protection and support to trafficked persons.

3.2. RATIONALE

Human trafficking violates numerous fundamental rights recognized by international law and the Constitution of Zambia. These include:

- i. the right to life, liberty, security and the protection of the law;
- ii. the right of young persons to protection from exploitation, unlawful child labour, trafficking, ill-treatment, cruelty and neglect;
- iii. the right not to be held in slavery or servitude;
- iv. the right to be protected against forced labour;
- v. the right not to be subjected to torture, inhuman or degrading treatment; and
- vi. the right to just, fair and safe work conditions.

The Constitution of Zambia, the UN Trafficking Protocol and various international and regional human rights instruments to which Zambia is a party place an obligation on the Government to prevent human trafficking and related practices, to investigate and prosecute offenders, and afford remedies and reparation to those who have been injured as a consequence of human trafficking. It also makes it incumbent on the Government to protect victims from further harm by treating trafficked persons with dignity and full respect for their human rights.

In addition to its human toll, trafficking in persons constitutes a growing threat to Zambian society and to national and regional security. Traffickers tend to target young women, unemployed youth and particularly vulnerable populations such as orphans and street children, thereby undermining the country's efforts to protect and

develop these members of society. Human trafficking fosters illegal migration, prostitution, and organized crime, and contributes to the spread of HIV-Aids.

Until now, Zambia has not had a national policy framework to address this complex problem. Governmental and non-governmental strategies to combat trafficking have not been effectively coordinated or harmonized at the national or regional level. Nor is the current legal framework adequate to effectively prosecute human traffickers for their crimes. Although Government has taken steps to combat human trafficking at its borders, assist victims, and prosecute cases, it recognizes the need for stronger laws and a more comprehensive and coordinated approach.

This National Policy will therefore provide the requisite framework for informing and guiding various stakeholders in their planning and execution of anti-trafficking interventions and contribute to the establishment of more effective mechanisms for coordination between stakeholders at the national, provincial and district level. [The Policy will also enable Zambia to begin meeting its international obligations with respect to the domestication and implementation of the UN Trafficking Protocol.]

3.3. GUIDING PRINCIPLES

The policy is guided by the following underlying principles:

- i. **Constitutional Rights and International Obligations:** The National Policy seeks to fulfill Zambia's constitutional and international obligations to protect its citizens from human trafficking and related human rights abuses. Consistent with these obligations, the Policy recognizes trafficked persons as victims rather than offenders and places primary emphasis on assisting trafficked persons and ensuring that their dignity and human rights are protected.
- ii. **Three P's Approach:** The National Policy reflects a comprehensive approach to human trafficking, consistent with the Trafficking Protocol and international best practice. The policy addresses Prevention and Protection, as well as Prosecution of offenders -- the essential elements of an effective counter-trafficking strategy commonly known as the "3 P's."
- iii. **Multi-sectoral Partnerships:** To achieve its objectives. Government must work in close partnership with a broad spectrum of stakeholders. This requires developing linkages and joint strategies with NGOs, CBOs, faith-based organizations ("FBOs"), the private sector and media organizations, promoting regional cooperation on trafficking through existing regional structures, and strengthening cooperation with IOM, ILO, and other international cooperating partners. All sectors of government and civil society must be actively involved in the design, implementation, review, monitoring, and evaluation of the national response.
- iv. **Gender- and child-sensitive policies:** Although anyone can be trafficked, young women and children are particularly vulnerable. Addressing the root causes of human trafficking requires a commitment to promoting economic and educational opportunities for women and children, addressing gender discrimination and gender-based violence, supporting vulnerable children and families, and eradicating HIV-AIDS. Effective prosecution and

protection strategies also require gender and child-sensitive approaches that avoid “secondary victimization” and take the special needs of women and children into account. In all actions concerning trafficked children, the “best interests of the child” must be the primary consideration.

- v. **Presumed Trafficked Persons:** Any person who may reasonably be presumed under the circumstances to be a victim of trafficking shall be treated as a “presumed trafficked person” and afforded the rights and protections available to “victims of trafficking.” Particularly at the early stages of identification and referral, doubts should be resolved in favor of the victim.
- vi. **Sustainability:** The interventions embarked on should be realistic and sustainable. Simple, low-cost measures should be adopted and counter-trafficking activities integrated wherever possible into existing programs, structures and initiatives.
- vii. **Political Leadership and commitment:** Strong political leadership and commitment at all levels is essential for sustained effective response.

CHAPTER FOUR: OBJECTIVES AND MEASURES

4.1 GOAL

The overall goal of the National Policy is to effectively combat human trafficking in Zambia.

4.2 BROAD OBJECTIVES

- i. **PREVENTION:** To reduce the incidence of human trafficking through, to, and from Zambia through the effective implementation of prevention and control measures.
- ii. **PROSECUTION:** To detect, investigate and prosecute perpetrators of human trafficking and related offences, and strengthen existing measures against organized crime.
- iii. **PROTECTION:** To assist victims of human trafficking and to ensure that their human rights are protected.
- iv. **MULTI-LATERAL COOPERATION:** To actively promote greater international and regional cooperation to combat trafficking and protect the rights of trafficked persons.
- v. **INSTITUTIONAL CAPACITY AND COORDINATION:** To increase institutional capacity and coordination among stakeholders to more effectively plan, implement, and monitor anti-trafficking interventions and to maximize use of available resources.

The objectives stated above shall be met through the following specific objectives and practical measures:

4.3 PREVENTION

4.3.1 Underlying Causes

Specific Objective: To address the underlying causes of human trafficking in Zambia

Measures:

Broad socio-economic factors such as poverty, disintegration of families, and unemployment will continue to be addressed through existing national programs and policies relating to children, youth, gender, poverty-alleviation, employment and HIV-Aids. In addition, Government shall:

- i. Encourage and support research to determine the root causes of human trafficking in Zambia and to identify effective prevention strategies.
- ii. Encourage and support research to determine the impact of customary law and traditional cultural practices, including “fostering,” migrant labour and early marriage, on the vulnerability of women and children to human trafficking.
- iii. Review the legal and policy framework to identify weaknesses in existing legal protections against gender inequality and discrimination.
- iv. Work with Ministry of Labour to ensure that statutory instructions governing child labour are adequate to address and deter internal forms of child labour trafficking.
- v. Consider enacting a minimum wage for the domestic worker sector.
- vi. Develop and implement public information campaign and other strategies aimed at reducing demand, with particular emphasis on child prostitution, child pornography, and child labour.
- vii. Implement a longer-term strategy to address “push” and “pull factors” that contribute to human trafficking, including by promoting employment opportunities for women and youth and fair working conditions for Zambian workers in all sectors as per the National Employment and Labour Market Policy, regularizing existing patterns of migrant labour, and promoting greater legal channels for education and employment abroad.

4.3.2 Public Awareness

Specific Objective: To increase public awareness regarding human trafficking

Measures:

- i. In conjunction with civil society stakeholders and relevant line ministries, implement broad based awareness raising campaigns aimed at educating the public about the dangers of trafficking, the methods used by traffickers, and the consequences of being trafficked. Campaigns should also include information on how to report human trafficking and where victims can go to obtain support and assistance.
- ii. Work with relevant ministries and Interpol to establish an accessible and workable system to assist members of the public to verify information in connection with foreign offers of employment and education.
- iii. Work with non-governmental stakeholders to support the implementation of a trafficking information and referral hotline. Establish linkages and facilitate

cooperation between hotline providers/operators and government/law enforcement.

4.3.3 Immigration and Documents

Specific Objective: To strengthen immigration, passport and document controls to prevent and detect trafficking in persons

Measures:

- i. Increase financial and human resources for border management and control.
- ii. Ensure adequate staffing, infrastructure, communications systems and logistical support at all major borders to improve detection and interception of human traffickers, including computerized passport readers/tracking systems, national radio communication network for immigration officers, patrol vehicles, copying/scanning equipment, and adequate barriers in heavily-populated or well-traveled areas.
- iii. Design and implement measures to strengthen capacity of immigration officers to protect children from cross-border trafficking, including improved systems to record and track cross-border movements of minors and accompanying adults.
- iv. Roll out new system of machine-readable passport and establish reasonable timeframe for phasing out previous passports.
- v. Ensure that all minors to carry their own passport, or at minimum, have updated photographs included in a parent's passport.
- vi. Design and implement measures to encourage and facilitate birth registration.

4.3.4 Harmful Labour Practices

Specific Objective: To prevent deceptive labour recruitment and exploitation of migrant workers

Measures:

- i. Work with Ministry of Labour and other relevant stakeholders to strengthen regulation and monitoring of recruitment agencies, recruitment advertising, and overseas employment contracts.
- ii. Develop information materials or other system to help those who are considering migrating for work or other reasons to make informed choices and to take proactive measures to protect themselves from trafficking or other exploitation. Ensure that information is widely disseminated through relevant government offices, educational institutions, foreign consulates, NGOs, CBOs, churches, and other partner organizations.
- iii. Work with Ministry of Labour and Ministry of Foreign Affairs to develop strategies to protect, monitor and assist Zambian migrant workers in overseas employment.

- iv. Encourage greater “self-regulation” by employment recruitment sector, such as through development of industry-wide “Codes of Conduct.”
- v. Study the feasibility of developing laws and/or regulations regarding the placement of recruitment advertisements in print or broadcast media, and develop recommendations regarding same.

4.3.5 Adoption

Specific Objective: To identify and address weaknesses in the adoption system in order to reduce the risk of adoption being used in connection with human trafficking

Measures:

- i. Review current laws, regulations and procedures relating to adoption.
- ii. Strengthen controls and eliminate possible loopholes in the adoption process and increase available penalties for adoption-related offences.
- iii. Strengthen implementation of existing adoption procedures by social welfare officers and the courts. Increase capacity and equip officers with adequate resources to follow required procedures.
- iv. Strengthen inter-ministerial cooperation to conduct background checks and verify and scrutinize information provided, particularly in connection with international adoptions.
- v. Strengthen monitoring of orphanages, children’s homes and other child care facilities by the Social Welfare Department.

4.3.6 Corruption

Specific Objective: To reduce all forms of corruption which facilitate human trafficking

Measures:

- i. Undertake research to assess the nature and extent of corruption in relation to human trafficking.
- ii. Work with Anti-Corruption Commission to establish effective corruption prevention measures in all relevant Departments and government offices.

4.4 PROSECUTION

4.4.1 Criminal offences

Specific Objective: To strengthen the laws available to prosecute human trafficking and related offences

Measures:

- i. Strengthen existing criminal offences relating to trafficking in persons consistent with the Trafficking Protocol requirements. Amend existing offences, as needed, to address gaps or weaknesses in the existing legislation and harmonize provisions as required.
- ii. Criminalize deceptive employment recruitment practices as a distinct offence.
- iii. Establish a distinct offence of migrant smuggling.
- iv. Increase penalties for immigration and passport offences by adults involving or facilitating cross-border movement of minors.
- v. Review and amend legal framework to ensure that offences relating to forced labour and slavery-like practices meet international legal standards and carry sufficient penalties.
- vi. Broaden the application of extra-territorial jurisdiction for trans-national crimes and crimes against Zambian citizens.
- vii. Establish human trafficking and migrant smuggling as extraditable offences.

4.4.2 Law enforcement mechanisms

Specific Objective: To strengthen the mechanisms available to law enforcement agencies to punish and deter human trafficking

Measures:

- i. Extend existing asset forfeiture provisions and mechanisms to allow civil forfeiture and confiscation of property used in human trafficking offences.
- ii. Develop and disseminate procedures for seizure and forfeiture of vehicles and other property used in the commission of immigration and trafficking-related offences.
- iii. Encourage investigation and prosecution of traffickers and their accomplices for money-laundering and corruption offences.
- iv. Provide aggravated sentencing provisions for trafficking offences committed by organized criminal groups.
- v. Extend criminal liability for trafficking to corporate bodies and other legal entities and associations.
- vi. Enact or strengthen provisions to allow the State to shut down any business whose activity is aimed at perpetrating or facilitating trafficking, revoke relevant business licenses, and/or disqualify individuals or entities convicted of trafficking from engaging in a particular type of business or activity in future.

4.4.3 Capacity and training

Specific Objective: To strengthen the capacity of law enforcement officers to detect and investigate trafficking crimes

Measures:

- i. Provide basic training on trafficking to all new law enforcement officers by integrating information relating to trafficking laws, investigations, and treatment of trafficked persons into the regular Police College training curriculum.
- ii. Establish and roll out a program to provide in-service training on human trafficking to law enforcement officers in cooperation with IOM and other stakeholders.
- iii. Develop and disseminate operational instructions on the detection and investigation of potential human trafficking cases and the treatment of presumed trafficked persons.
- iv. Build the capacity of the specialized Zambian Police Service unit tasked with investigating trafficking and related offences.
- v. Appoint and train trafficking focal points or “liaison officers” at the national, provincial, and district level, and at each major border to collect and share data on human trafficking cases, coordinate with other stakeholders, and provide advice and support to other officers on trafficking-related issues.
- vi. Decentralize and strengthen Interpol offices, with priority given to areas near major international borders. Promote greater involvement of Interpol officers in cross-border investigations of human trafficking through provision of specialized training, resources, and equipment.
- vii. Ensure that counter-trafficking programs and measures address internal forms of trafficking as well as cross-border crimes. Promote stronger enforcement of existing laws prohibiting child sexual exploitation, prostitution and pornography.
- viii. Strengthen the capacity of the criminal investigations wings of the Zambian Police Service to investigate high-level organized crime.
- ix. Build capacity and increase resources for monitoring and enforcement of existing labour standards in sectors prone to human trafficking.
- x. Increase coordination and cooperation between Ministry of Labour and other branches of law enforcement with respect to investigation and prosecution of both internal and cross-border forms of trafficking for purposes of labour exploitation.

4.4.4 Prosecutions

Specific Objective: To enhance the effectiveness of trafficking prosecutions

Measures:

- i. Provide specialized training to prosecutors on the prosecution of trafficking offences and laws available to prosecute traffickers.
- ii. Develop a comprehensive, user-friendly human trafficking resource manual to ensure that prosecutors have access to current laws of Zambia, relevant international instruments, case law and other persuasive authority.
- iii. Strengthen bail-related measures to ensure that accused traffickers appear in court.
- iv. Work with non-governmental stakeholders to prepare vulnerable witnesses to testify in court.
- v. Establish a national witness protection policy.
- vi. Review, and amend mutual legal assistance treaties to include human trafficking as an offence for which mutual legal assistance is available.
- vii. Draft and distribute practice instructions and sentencing guidelines on human trafficking to the judiciary.
- viii. Provide specialized training to members of the judiciary to sensitize them to the problem of human trafficking, the relevant legal framework, and special needs of vulnerable witnesses.
- ix. Monitor the investigation and prosecution of trafficking cases and promote inter-departmental and inter-national cooperation regarding same.

4.5 PROTECTION**4.5.1 Identification and referral of trafficked persons**

Specific Objective: Strengthen the capacity of all relevant stakeholders to identify presumed trafficked persons and refer them to appropriate services

Measures:

- i. Establish national guidelines on the identification of trafficked persons and distribute widely to relevant stakeholders.
- ii. Strengthen the capacity of key stakeholders and the general public to identify and refer trafficked persons, through public education campaigns, and integration of trafficking information in curricula of national training institutions.
- iii. Develop and disseminate public information, education and communication materials to all relevant government offices and other stakeholders.
- iv. Develop a national referral mechanism or protocol containing uniform procedures to follow where a trafficked person reports/requests assistance, or where a presumed trafficked person is identified.
- v. Establish strong linkages between local law enforcement and NGO service providers to enhance cooperation and referral of victims.

- vi. Cooperate with Zambian missions abroad to identify anti-trafficking programs and available support services for victims of trafficking in the countries where they are posted, and, where relevant, to develop agreements regarding notification, referral, and care of Zambian nationals presumed to be victims of trafficking abroad.
- vii. Ensure that foreign missions in Zambia are aware of the referral protocol and services available to presumed victims of trafficking in Zambia.

4.5.2 Immigration status and reflection delay

Specific Objective: To regularize the immigration status of foreign victims of trafficking to enable them to avoid detention/deportation and stay legally in the country for an appropriate period of time.

Measures:

- i. Amend existing laws and procedures to allow Immigration officers to issue a temporary residence permit to presumed trafficked persons for a period of up to 90 days, without payment of a security or fee, and to extend the permit for good cause.
- ii. In keeping with international best practice, allow trafficked persons a “reflection delay” period of up to 90 days temporary residence, to allow presumed victims to stabilize their situation and to arrange for safe and voluntary repatriation. Cooperation with law enforcement shall not be a condition for issuance of the initial permit.
- iii. Draft and disseminate instructions to ensure that children and presumed trafficked persons are not detained in law enforcement detention facilities and that no person is removed from Zambia where there is a reasonable basis to suspect that the person is or may be a victim of trafficking.

4.5.3 Victim care and services

Specific Objective: Ensure that victims of trafficking receive safe shelter and are able to access appropriate services, including education, medical care, and psycho-social counseling.

Measures:

- i. Conduct mapping exercise to identify available public services and civil society organizations in a position to provide appropriate shelter and other relevant services to victims of trafficking, particularly in border and rural areas.
- ii. Develop system to accredit and monitor shelter and service providers used by Government to provide services to trafficked persons.
- iii. Establish policy guidelines or instructions allowing presumed victims of trafficking to access publicly funded health and education services, regardless of nationality or immigration status, and where possible, free of charge.

- iv. Whenever a presumed victim of trafficking is under the age of 18, Government shall assign an authorized social worker or other Guardian to monitor the child's welfare, and participate in key decisions regarding the child.

4.5.4 Legal information and advice

Specific Objective: Ensure that trafficked persons are informed of their legal rights and the nature and status of relevant court and/or administrative proceedings

Measures:

- i. Work with Legal Aid, legal NGOs, and other legal organizations to provide free legal advice and/or representation to victims of trafficking at the earliest possible opportunity and to liaise with prosecutors with respect to criminal proceedings.
- ii. Implement measures to ensure that victims of trafficking are provided with information on all court and/or administrative proceedings that affect them.
- iii. Work with prosecutors and the judiciary to enable victims to present their views and concerns at appropriate stages of criminal proceedings.

4.5.5 Safety

Specific Objective: Provide for the safety and physical security of trafficked persons in Zambia

- i. In conjunction with law enforcement and shelter providers, develop individual "protection plans" to address the safety needs of identified victims of trafficking.
- ii. Ensure that witnesses in criminal proceedings against human traffickers receive appropriate witness protection.

4.5.6 Protection in court proceedings

Specific Objective: To reduce secondary trauma and improve the effectiveness of witness testimony by creating a victim and child-friendly court environment for victims of trafficking testifying in court

Measures:

- i. Establish criteria for determining whether a child or adult is a "vulnerable witness."
- ii. Extend privacy protections and support available to offenders under the Juveniles Act to child witnesses and other vulnerable witnesses testifying in court.
- iii. Strengthen the capacity of prosecutors to prepare vulnerable witnesses for trial.
- iv. Strengthen measures to ensure that names and identifying photographs of trafficked persons are not published in the media.

4.5.7 Compensation

Specific Objective: To provide practical opportunities for victims of trafficking to obtain restitution and/or compensation from their traffickers

Measures:

- i. Increase awareness of existing provisions allowing compensation as part of sentencing in criminal proceedings.
- ii. Increase the amount of compensation that can be awarded to victims upon conviction.
- iii. Strengthen procedural mechanisms to facilitate compensation awards.
- iv. Issue practice instructions to judiciary regarding compensation in human trafficking cases.
- v. [Extend remedies for labour violations to victims of trafficking, irrespective of immigration status at the time the violations occurred].
- vi. Work with Legal Aid, legal NGOs, and other legal organizations to provide free representation to victims of trafficking seeking compensation in civil proceedings.
- vii. Ensure that the status of legal proceedings is taken into account when arranging victim repatriation.

4.5.8 Repatriation

Specific Objective: To arrange safe and dignified return/repatriation of victims of trafficking to their communities and/or countries of origin

Measures:

- i. Through the Ministry of Foreign Affairs, institute measures to ensure that the Ministry of Home Affairs is informed regarding the deportation/repatriation of Zambian nationals identified as victims of trafficking.
- ii. Work with IOM to assist Zambians who have been trafficked to return to Zambia.
- iii. Develop system to inform returning nationals of services available to trafficked persons in Zambia.
- iv. With the Ministry of Community Development and Social Services, develop guidelines and procedures for the safe repatriation of children.
- iii. To the extent possible, coordinate with government and NGOs in the home country of non-Zambian victims to arrange appropriate protection and support services for the victim upon repatriation.
- iv. Review and refine immigration department policy with respect to handling of suspected trafficking victims intercepted at border prior to entering Zambian national territory, in order to reduce the risk of victims being “re-trafficked.”

4.5.9 Rehabilitation/ reintegration

Specific Objective: To support the longer-term rehabilitation and reintegration of trafficked persons into their families and communities

Measures:

- i. Work with IOM, NGOs and civil society organizations to provide gender- and age-appropriate rehabilitation and social reintegration services to victims of human trafficking.
- ii. Identify public institutions and programs that provide education, training, and small business support, and assist trafficked persons to access these programs.

4.6 MULTI-LATERAL COOPERATION

Objective: To promote greater international and regional cooperation to combat trafficking and protect the rights of trafficked persons.

Measures:

- i. Promote discussion and joint initiatives on human trafficking through existing regional and bi-lateral coordination mechanisms, such as SADC, COMESA, MIDSA, Permanent Joint Commissions, Joint Operations Committees, Interpol and SARPCCO.
- ii. Initiate discussions with regional counterparts through Joint Operations Committees, Joint Permanent Commissions or other existing mechanisms regarding the joint development of standardized forms, parental authorization and verification measures, and procedures for cross-border movement of minors.
- iii. Through the Ministry of Foreign Affairs, identify key destination and transit countries for Zambian victims of trafficking and liaise with relevant authorities in those countries.
- iv. Strengthen regional and international networks to more effectively identify and assist victims of trafficking outside Zambia.
- v. Strengthen cooperation with the International Social Services Network.
- vi. Take steps to promote regional harmonization of anti-trafficking legislation, particularly with respect to criminal matters and treatment of victims.

4.7 INSTITUTIONAL CAPACITY AND COORDINATION

Objective: To increase institutional capacity and coordination among stakeholders to more effectively plan and implement anti-trafficking interventions and to maximize use of available resources

Measures:

- i. Establish a National Secretariat to lead and coordinate the implementation of the national policy.
- ii. Establish inter-sectoral coordinating committees on trafficking at the regional and/or district level, and ensure that they are integrated into existing coordinating structures and mechanisms.
- iii. Appoint trafficking focal point persons in relevant government ministries.
- iv. Appoint trafficking liaison officers and/or focal point persons at the district/field level.
- v. Expand representation on the National Committee to include non-governmental partners [and/or establish consultative forums at national and regional level to provide opportunities for non-governmental stakeholders to consult regularly with government on trafficking related issues].
- vi. Develop and implement a national data base for monitoring and evaluation of trafficking programs and strategies. Institute appropriate protections for private/confidential information.
- vii. Promote research and data collection on trafficking and related issues.

CHAPTER FIVE: IMPLEMENTATION FRAMEWORK

5.1 INSTITUTIONAL ARRANGEMENTS

5.1.1 Role of Government

The primary responsibility for addressing the problem of human trafficking rests with the Government of Zambia. Effective implementation of the policy will require commitment, participation and cooperation from all relevant ministries. Key Government responsibilities will include leadership, coordination, resource mobilization, legal reform, law enforcement, border control, document issuance and control, education and capacity building, and international cooperation. Government will also work closely with international and non-governmental partners to raise public awareness and provide protection and services to victims, through a coordinated program of victim assistance.

5.1.2 Ministry of Home Affairs

The Ministry of Home Affairs will be the lead ministry responsible for the development and implementation of Zambia's counter-trafficking strategy. Through the National Secretariat, Home Affairs will continue to lead the inter-ministerial National Technical Committee on Trafficking in Persons (the "National Committee") and coordinate the national multi-sectoral response.

The Ministry, through its relevant departments, will also appoint and specially train liaison officers at key police stations and border posts throughout the country to act as trafficking focal points at the local level. The mandate of the liaison officers will be to assist with trafficking related matters, to advise other officers on trafficking investigations and trafficking-related issues (such as victim referral and witness protection), collect data and report on trafficking cases, monitor the handling of cases by local law enforcement, and coordinate with police and immigration headquarters, Interpol and the National Secretariat. To the extent possible, liaison officers will also participate in district-level coordinating structures addressing trafficking. "Focal points" will also be established at the Departmental level in Immigration, DEC, ACC, Zambian Police Service, Zambian Prisons Service, and National Registration, Passports and Citizenship to plan and coordinate trafficking-related activities and represent their respective departments in the National Committee.

With respect to its sectoral responsibilities, the Ministry of Home Affairs, through its departments and agencies, and in cooperation with other relevant stakeholders, will be responsible for:

- i. Development of comprehensive human trafficking legislation;
- ii. Implementation of measures relating to law enforcement, immigration controls, anti-corruption, document control and birth registration;
- iii. Strengthening the capacity of law enforcement officers to detect and investigate human trafficking and to identify victims of trafficking;
- iv. Improving coordination between the various arms of Zambian law enforcement and with regional and international law enforcement organizations and counterparts to enable more effective investigation of human trafficking and organized crime;
- v. Issuance of temporary residence permits to foreign victims of trafficking;
- vi. Witness protection;
- vii. Seizure and confiscation of assets;
- viii. Verification of identity and citizenship/residence;
- ix. Reception of Zambians trafficked abroad; and
- x. Repatriation of trafficked persons.

5.1.3 National Secretariat

An effective response to human trafficking requires a partnership approach, involving government Ministries, local and international NGOs, CBOs, religious organizations, the private sector, UN agencies and bilateral donors. This partnership approach requires effective coordination of the policies and activities in each of these different sectors in order to ensure complementarity in activities and avoid the inefficient use of limited financial and human resources.

Strengthening the existing institutional framework is necessary in order to provide effective oversight coordination and oversight, as well as technical guidance and support in the development and implementation of human trafficking programs and activities. To this end, Government, through the Ministry of Home Affairs, will establish a National Secretariat responsible for coordinating Government's multi-sectoral response to human trafficking. The Secretariat shall be housed in the Ministry of Home Affairs and will include, at minimum, a dedicated National Coordinator/ Focal Point for Human Trafficking, and a small team to support the Coordinator and the National Committee in such areas as law enforcement response and coordination; prevention; victim assistance; and monitoring/evaluation. The staff of the Secretariat may be recruited or seconded from relevant ministries, depending on available resources.

The role of the National Secretariat shall be to:

- i. Organize and lead the National Technical Committee on Trafficking in Persons;

- ii. Work with the National Committee to develop and implement a strategic Plan of Action to achieve the objectives of the National Policy;
- iii. Establish funding priorities; mobilize, and coordinate donor funding;
- iv. Work with ministries and other stakeholders to design and implement counter-trafficking and victim assistance programs and strategies, and to coordinate, monitor and evaluate the implementation of those measures;
- v. Work with local stakeholders to establish inter-sectoral coordinating committees on trafficking at the regional and/or district level, and/or to integrate trafficking-related concerns and strategies into existing community-based coordinating structures;
- vi. Liaise with and support the local coordinating committees, trafficking focal points/liaison officers, and non-governmental stakeholders to achieve the objectives of the national policy at the local level;
- vii. Monitor the treatment, referral, care, legal status, and repatriation of identified victims of trafficking in Zambia, including internally-trafficked Zambians, non-Zambians, and Zambians who have returned or are still in other countries, to ensure that victims receive treatment and assistance consistent with the National Policy and implementing guidelines and protocols;
- viii. Develop and maintain a national data base to support effective monitoring and evaluation;
- ix. Compile and disseminate data, informational resources, and research findings.

5.1.4 Role of Other Government Ministries

Focal Points. All relevant ministries/departments shall appoint a focal point person to represent the ministry/department on the National Committee and be responsible for planning and overseeing the implementation and mainstreaming of anti-trafficking programs and activities in his or her ministry/department. The focal point's role should be viewed as a primary function of his or her position and fully integrated into his or her job description. Each ministry/department shall also appoint and empower trafficking focal points at the provincial and district level.

Sectoral responsibilities. In addition, each line ministry, with assistance from the National Secretariat, will be responsible for reviewing the National Policy and developing an Action Plan to implement those measures falling within the ministry's institutional mandate, such as:

- i. Ministry of Justice: legislation, prosecutor training, witness protection policy, judiciary, extradition and mutual legal assistance;
- ii. Ministry of Foreign Affairs: international and regional cooperation, verification of foreign employment/education opportunities, assistance to Zambian victims trafficked abroad;
- iii. Ministry of Labour: enforcement of employment/labour laws, regulation and monitoring of employment recruitment agencies, strengthening/harmonizing

- labour laws with respect to human trafficking, implementation of national and community-based strategies to combat child labour;
- iv. Ministry of Communication and Broadcasting: communication strategy, public information campaigns;
- v. Ministry of Social Welfare: victim assistance and monitoring;
- vi. Ministry of Health: training health professionals, victim health services;
- vii. Ministry of Sport, Youth and Child Development: trafficking prevention, mainstreaming trafficking into youth and child related policy initiatives.

5.1.5 Role of Non-Governmental Stakeholders

Non-governmental stakeholders have a critical role to play in the country's efforts to combat human trafficking. Key stakeholders include:

- i. Civil Society Organizations (NGOs, CBOs, FBOs): community development and support, outreach and awareness-raising, advocacy and lobbying, provision of shelter and services to victims of human trafficking and their families, information sharing;
- ii. International Organizations and Co-operating Partners: technical assistance, financial support, advocacy and lobbying, training and capacity-building programs, repatriation assistance;
- iii. Family/Community: assistance and support to vulnerable groups, awareness-raising, identification and support to victims, reintegration assistance;
- iv. Media: Raising public awareness about the dangers and consequences of human trafficking; monitoring and deterring the use of advertising for trafficking purposes;
- v. Private sector: addressing the role of private sector companies and industries in facilitating human trafficking, through measures such as Codes of Conduct and disciplinary action against employees who engage in trafficking and related abuses; promoting employment opportunities for women and youth; providing fair working conditions for workers and abiding by existing labour laws; raising awareness; financial and material support for the implementation of anti-trafficking and related programs.

5.2 LEGAL FRAMEWORK

The legal framework for addressing human trafficking is contained in various international and regional instruments, as well as national law.

The principal international document outlining State obligations with respect to human trafficking is the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking Protocol"), supplementing the United Nations Convention against Transnational Organized Crime ("CTOC"). Having acceded to the Trafficking Protocol, the underlying Convention, and the Migrant Smuggling Protocol on April 24, 2005, Zambia now has

an obligation to domesticate the provisions of these instruments into national laws and programmatic strategies. The Trafficking Protocol requires member States to establish human trafficking as a serious criminal offence, take appropriate measures to prevent human trafficking, assist victims of trafficking, strengthen border controls and improve international cooperation. Underscoring the relationship between organized crime, migrant smuggling and human trafficking, CTOC and the Migrant Smuggling Protocol require States to take appropriate measures to combat organized crime, migrant smuggling, corruption and money-laundering; strengthen border and document controls; establish asset forfeiture provisions and implementing mechanisms; and provide for extradition and mutual legal assistance for trafficking and other trans-national offences.

Relevant legal provisions are also contained in various international and regional human rights instruments to which Zambia is a party. These include, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the UN Convention on the Rights of the Child (CRC); ILO conventions on minimum age for employment, forced labour, and worst forms of child labour; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the African Charter on Human and Peoples Rights; the African Charter on the Rights and Welfare of the Child; and the Charter of Fundamental Social Rights in SADC. Many of these rights are also reflected in the Constitution of Zambia.

Zambia's statutory framework also contains provisions relevant to human trafficking, although there is not currently a comprehensive human trafficking law. In 2005 the Penal Code was amended to add a distinct anti-trafficking offence (section 143) and to strengthen other criminal offences relating to sexual exploitation. These and other relevant provisions of the Penal Code should be further strengthened consistent with the requirements of the UN Trafficking Protocol and international best practice. Other existing legal provisions contained in the Immigration and Deportation Act (relating to illegal immigration and temporary permits), the Employment of Children and Young Persons Act (relating to worst forms of child labour), and Civil Procedure Code (relating to compensation and witnesses) are also relevant to human trafficking and should be reviewed and harmonized with the National Policy and relevant Penal Code provisions. A provision specifically criminalizing migrant smuggling should be added to the Immigration law and asset forfeiture provisions extended to include procedures for civil forfeiture and confiscation of property used in the commission of crime. Finally, domestic legislation governing adoption, child protection, extradition and mutual legal assistance should be reviewed and strengthened to take human trafficking into account.

5.3 MONITORING AND EVALUATION

The implementation of the National Police to Combat Human Trafficking requires effective monitoring and evaluation with appropriate feedback mechanisms from the ministries and other stakeholders, including law enforcement, service providers and the victims themselves. The National Secretariat will be responsible for developing and coordinating a monitoring and evaluation plan, establishing and maintaining a national data base (with appropriate procedures to protect private/confidential information), and developing standardized indicators and data collection instruments.

It will also serve as a clearinghouse for relevant research. The National Secretariat will rely on existing structures at the national, provincial and local level, district or regional coordinating committees, NGO service providers, as well as designated “trafficking focal points” and “liaison officers” to collect and report data from the field. The Secretariat will also encourage non-governmental partners to participate in periodic consultative forums and will work with universities and other research organizations to encourage research on human trafficking and evaluation of counter-trafficking programs and initiatives.

Implementation of the National Policy is a long-term process. The content of the policy and implementation of proposed measures will be carefully monitored, periodically reviewed and revised as needed to ensure that the policy is effective and relevant. Moreover, the National Secretariat will ensure that mechanisms to collect information and obtain feedback from all relevant stakeholders -- including victims of trafficking -- are integrated from the outset.

5.4 RESOURCE MOBILIZATION AND FINANCING

Implementation of the National Human Trafficking Policy will require both local and external resource mobilization based on the outlined policy goals, objectives and priorities. Funding for human trafficking measures should be included in the proposed budgets of relevant line ministries. Through the National Secretariat, Government will also work closely with donors and other international and local partners to identify and coordinate potential resources for short and long-term anti-trafficking interventions. To supplement budgetary and donor resources, Government will strengthen measures to confiscate criminal assets and proceeds. Encouraging private sector and civil society involvement in the implementation of measures is also a key component of the resource mobilization strategy.

Sustainability of the program requires Government to maximize the use of existing and new resources. This means that simple, low-cost measures should be adopted wherever possible, and issues relating to human trafficking mainstreamed into existing government programs and training curricula. Government will also work with the inter-ministerial National Committee to identify areas of potential synergy with existing programs and policies, such as those relating to children and youth, child labour, economic empowerment for women, poverty alleviation, migration policy and HIV-AIDS. Anti-trafficking messages and activities should be integrated into existing programs, structures and strategies wherever possible and appropriate to avoid duplication of efforts and maximize use of available resources.

DELIVERABLE 3: DRAFT ANNOTATED ANTI-TRAFFICKING LEGISLATION

Revised Annotated Draft⁴⁰
March 3, 2007

ZAMBIAN HUMAN TRAFFICKING BILL (Key Provisions)

An Act to provide for the prevention, suppression and punishment of human trafficking, for the protection, rehabilitation and reintegration of trafficked persons, and for matters connected with or incidental to the foregoing.

Be it enacted by Parliament as follows:

PART I: INTERPRETATION

In this Act, unless the context otherwise requires:

“Trafficking in persons” shall mean [all acts and attempted acts relating to] the recruitment, [sale, supply,] transportation, transfer, harbouring, or receipt of a child or any other person, within or across the borders of the Republic, [by any means,] for the purpose of exploitation.

“Exploitation” [shall mean/includes, without limitation:]⁴¹

- a. [placing or keeping a person in a state of] slavery or servitude, including sexual servitude

⁴⁰ This preliminary draft is prepared for the internal use of the Zambian Law Development Commission and contains various questions, comments, and alternative provisions. This document may be circulated for discussion and comment among selected stakeholders and advisors to the law commission, but is not intended as a final draft of the Bill. The current version reflects changes suggested by members of the National Committee, Sub-Committee on Legislation, at the ZLDC workshop on February 17, 2007. While not exhaustive, certain key provisions relating to the care and protection of victims are also included in this draft.

⁴¹ Using “include” rather than “mean” leaves the provision open-ended. This has pros and cons. Pro: does not foreclose other kinds of exploitation that may emerge; Con: may be interpreted too broadly. Solution??

- b. [subjecting a person to] practices similar to slavery, [including debt bondage and forced marriage] ⁴²
- c. [causing a person to provide] forced labour or services
- d. sexual exploitation
- e. child labour⁴³
- f. [illicit] removal of organs or body parts
- g. ??

“Child” means any person under the age of 18 years.

“Child labour” means work by a child, in any sector, whether paid or unpaid which:

- (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and
- (b) places at risk the child’s well-being, education, physical or mental health, or spiritual, moral, emotional or social development.⁴⁴

“Coercion” means any threat, direct or implied, such that a person believes he or she has no reasonable alternative but to submit to the demands of another person.

“Debt bondage” means the status or condition that arises from a pledge by a person of his or her personal services or the personal services of another person under his or her control as security for a debt, including a debt incurred after the pledge has been made, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or purported debt, or the length and nature of those services are not respectively limited and defined.

“Forced labour” shall mean all work or service that is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.⁴⁵

⁴² These terms should be added, along with pledging/selling/transferring a child if the term “slavery-like practices” is not defined elsewhere in the law.

⁴³ Child labour per se is not included in the Protocol definition of exploitation. Certain forms of child labour are encompassed under terms such as “practices similar to slavery,” “forced labour,” etc. However, several countries in the region, including South Africa and Nigeria, have specifically included child labour in their human trafficking legislation. Should Zambia follow this approach? If so, should all forms of unlawful child labour be included, or only more serious abuses? What is the relationship between this provision and the relevant child labour provisions under the Employment of Children and Young Persons Act?.

⁴⁴ This follows South Africa’s definition. An alternative would be to refer to violations of the Employment of Children and Young Persons Act, but this could be overly broad, and/or circular (given definition of worst forms of child labour under that Act). See also, proposed definition of child labour in proposed statutory instrument: “work carried out by children under conditions that are stifling, detrimental and dangerous to the child and that affects proper physical, emotional and intellectual development in violation of international law and national legislation.” See also, footnote 4.

⁴⁵ ILO definition. Should this be simplified?

“Illicit removal of organs or body parts” means the removal of organs or body parts from another person without his or her informed consent or by any person in contravention of the Human Tissues Act or any other written law.⁴⁶

“Lawful custodian,” in relation to a child, means the child’s parent or lawful guardian or any person who has been given custody of the child by the child’s parent or legal guardian or by virtue of an order of a court;

“Material Loss” means⁴⁷

“Migrant smuggling” means the procurement of the illegal entry of a person into a State of which the person is not a national or permanent resident, in order to obtain, directly or indirectly, a financial or other material benefit.

“Opportunity” means a chance or prospect that offers some kind of advantage or favorable circumstances [TOO BROAD?]

“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences, in order to obtain, directly or indirectly, a financial or other material benefit.⁴⁸

“Person” includes a natural person or a body of persons, whether incorporated or unincorporated, unless the context indicates otherwise.

“Personal Injury” means actual harm caused to a person, including physical, mental and psychological suffering and damage to name or reputation.

“Practices similar to slavery” shall mean those practices defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and include debt bondage, forced or servile marriage, and the delivery or transfer of children for exploitation.⁴⁹

“Servitude” means a condition of dependency in which the labour or services of a person are obtained by coercive means or the abuse of power or vulnerability.⁵⁰

⁴⁶ This definition needs refinement. There does not appear to be any legislation in Zambia that addresses “lawful” removal of organs and/or body parts from a living person. The Human Tissues Act only applies to deceased persons. Could this fall under legislation or regulations relating to the practice of medicine?

⁴⁷ Is this term defined in the CPC? If so, use same term and definition, but include unpaid wages or the value of labour or services to the employer. (See, e.g., restitution provision in TVPA).

⁴⁸ Definition is based on the definition in Article 2 of the UN Convention on Transnational Organized Crime.

⁴⁹ See note 3, above. Should the full international definition contained in Supplementary Convention be used? Has Zambia ratified this Convention?

⁵⁰ This definition is similar to one proposed by the International Human Rights Law Group. There is no internationally recognized definition of this term. See also the US definition of involuntary servitude in the TVPA or the SA version, below: “a condition in which the labour or services of a person are provided or obtained through threats of serious harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person does not perform such labour or services, that person or another person would suffer serious harm.”

“Sexual exploitation” shall mean participation in any sexual activity, whether for reward or not, including but not limited to prostitution, sexually explicit performance, sexual servitude, unlawful carnal knowledge or indecent acts, or the production of pornographic materials;

- (a) of a person under the age of 18⁵¹ years; ⁵² or
- (b) of any person, as a result of being subjected to force, threat, coercion, deception, abuse of authority, abuse of vulnerability, debt bondage or fraud, ⁵³ and *includes* the obtaining by a person of any financial or other benefit from the prostitution or sexual exploitation of another person.

“Slavery” shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

“Trafficked person” or “Victim of trafficking” under this Act means a person who has, or may reasonably be presumed under the circumstances to have been, the subject of the offence of “trafficking in persons” or a related offence under this Act.

PART II. CRIMINAL OFFENCES AND PENALTIES

1. TRAFFICKING IN PERSONS

- (a) Any person who knowingly traffics another person or persons [or engages in “trafficking in persons” as defined in Part I?] commits an offence and is liable, upon conviction, to imprisonment for a term of _____.⁵⁴
- (b) For purposes of this section, it is immaterial whether the trafficked person⁵⁵ or, if a child, the lawful custodian of the child, gave or purported to give

⁵¹ The age here may create some conflict with the Amendments to the Penal Code (2005) relating to procurement for prostitution, defilement, etc. but is consistent with the Employment of Children and Young Persons Act. Note that the penalties for trafficking for sexual exploitation should be consistent with those for procurement/defilement.

⁵² Question: how do we include non-commercial forms of sexual exploitation in definition of child trafficking without being overly broad (i.e. capturing consensual sex by teenagers, etc.). Option 1: Commercial sex = under 18/non-commercial sex = under 16; Option 2: Only include commercial sex acts here and define sexual servitude more broadly. Other?

⁵³ This definition aims to exclude from the definition of human trafficking VOLUNTARY prostitution or other sex acts BY ADULTS. However, as a practical matter, it puts an additional burden on prosecutors to prove coercion, deception, etc.

⁵⁴ The current Penal Code section 143 imposes a minimum sentence of 20 years for trafficking with up to life for trafficking involving “unlawful carnal knowledge. We have left this open in order to debate the merits of such a high minimum sentence in all cases, and have suggested that policy makers consider a somewhat lower minimum with aggravating circumstances for sentencing. This allows the court more discretion in imposing an appropriate sentence. Note, however, that such a strategy may create conflicts with the sentencing for the amended Penal Code Provisions. With respect to asset forfeiture and compensation, the sub-committee preferred to include the asset forfeiture and compensation provisions as a general provision applicable to all offences under the Act, rather than to include them specifically under each offence. The benefit of keeping them in under each offence, even though repetitive, is that they are less likely to be overlooked that way!

⁵⁵ I’m not sure what term to use here. “Victim” or “person trafficked” may be circular, since the crime of trafficking has not yet been proved.

consent to any act or acts comprising the offence of trafficking in persons where:

- (i) consent was obtained through the use of threat or use of force or other forms of coercion, debt bondage, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or
- (ii) the trafficked person was under the age of 18 at the time the act or acts constituting trafficking in persons was committed.⁵⁶

2. PRESUMPTION OF UNLAWFUL INTENTION ⁵⁷

- (a) Where, in any proceeding under this Act, it is proved that a person, has recruited, transported, transferred, harboured, or received another person, or attempted or conspired to recruit, transport, transfer, harbour or receive another person in circumstances reasonably suggesting “trafficking in persons,” such act or act shall be presumed, in the absence of a satisfactory explanation, to be for the purpose of exploitation.
- (b) For purposes of this section, “circumstances reasonably suggesting trafficking in persons” shall include:
 - (i) Crossing, attempting to cross, or committing any of the above acts with intent to cross an international border with a minor or minors, or knowing facilitation of said crossing or attempted crossing, not being the parent or legal guardian of said minor or minors, without the informed consent of the parent or legal guardian(s) of said minor or minors [DELETE?] ⁵⁸
 - (ii) Crossing, attempting to cross, or committing any of the acts referred in Paragraph A with intent to cross an international border in contravention of this Act or any other written law.

⁵⁶ The original section on penalties is deleted and replaced with a general provision later in the text which allows compensation and asset forfeiture for all offences under the Act. The provision limiting defenses is also deleted and replaced with the above provision on consent. Note that I am still concerned about the offence being disallowed where the victim has a sexual history or has previously engaged in prostitution, given the common law on “procurement for prostitution.” How can this be addressed?

⁵⁷ The purpose of this provision is to shift the burden to the defendant to demonstrate a satisfactory explanation for acts particularly where the trafficker is intercepted in transit before the intended exploitation occurs]. The Constitution allows such a shifting of the burden under section 18 (12)(A) in relation to particular facts. For a precedent in the law, see the Anti-Corruption Commission Act.

⁵⁸ Members of the sub-committee found this part potentially problematic, as it is not uncommon for minors to cross international borders without a parent/guardian for legitimate reasons, and there are currently no mechanisms to verify parental consent. I agree that there are practical problems but I think it is important to consider this issue further, rather than delete it at this stage. One option would be to require written consent of a parent for a minor to leave or enter Zambia as a provision under the Immigration Act. Then lack of consent would be covered under section (ii). Note that removing a child under 14 (if a boy) or 16 (if a girl) from Zambia without the consent of a parent/guardian constitutes kidnapping under Penal Code section 252. However, the definition of minor is broader (under 18/21?).

- (iii) Restricting the free movement of another person, the person's access to his or her identity or travel documents, or the person's communications with others
- (iv) The use of intimidation, force, coercion or deception at any stage of the process.

3. SALE AND PURCHASE OF HUMAN BEINGS⁵⁹

Any person who buys, sells, or trades another person for any purpose commits an offence and is liable, upon conviction, for a term of imprisonment of not less than _____ years.

4. DECEPTIVE RECRUITMENT

- (a) Any person who:
 - (i) by any means, recruits another person, whether a specific person or persons generally,
 - (ii) for employment, education, marriage, or any other kind of arrangement or opportunity,
 - (iii) knowing or having reason to know that the opportunity or any material fact relating to the opportunity for which the other person is recruited, including but not limited to the nature, legality, conditions, terms or requirements of the opportunity, is false or deliberately misleading, commits an offence and is liable, upon conviction, to a fine of _____ penalty units or imprisonment for a term of _____ years, or both.
- (b) Prosecution under this part does not preclude prosecution of the accused for human trafficking where the evidence supports such a charge.

5. UNLAWFUL DETENTION

- (a) Any person who intentionally and unlawfully deprives another person of his or her freedom of bodily movement, intending to cause such deprivation or realizing that there is a real risk or possibility that such deprivation will result, shall be guilty of the offence of unlawful detention and liable to a fine of _____ penalty units or a term of imprisonment of _____ years, or both.
- (b) A person may be guilty of unlawful detention whatever the means used to deprive another person of his or her freedom of bodily movement, whether by the use of physical restraint, threats, force, coercion, deceit, abuse of power, or any other means, and whatever the period over which the person deprived another person of his or her freedom of bodily movement.⁶⁰

⁵⁹ The Sub-committee agreed that Zambia should continue to have a simple provision outlawing the sale of human beings for any purpose.

⁶⁰ This provision is important in the human trafficking context, and not sufficiently covered in the Penal Code under wrongful confinement (too limiting, and a low penalty), kidnapping or abduction. It could be included as an amendment to the Penal Code instead of here, however, as it could apply to other

6. ILLEGAL DEPRIVATION OR MISUSE OF IDENTIFICATION DOCUMENTS⁶¹

- (a) Any person who intentionally and unlawfully:
- (i) deprives another person of custody of, or free access to, their personal identification documents, passport, and/or other official travel documents, [whether actual or purported]; or
 - (ii) possesses, conceals or destroys the actual or purported personal identification document, passport or other official travel document of another person

in order to restrict another person's freedom of movement or to maintain the labour or services of that person,⁶² commits an offence and shall be liable upon conviction to a fine of _____ penalty units or imprisonment for a term of _____ years, or both.

7. PLACING OR HOLDING PERSONS IN CONDITIONS OF SLAVERY, SERVITUDE OR FORCED LABOUR

Any person who places or holds another person in conditions of slavery, servitude, or forced labour, or who knowingly obtains a benefit, financial or otherwise, from the slavery, servitude, or forced labour of another person, commits an offence and is liable, upon conviction, to a term of imprisonment of not less than _____ years.⁶³

8. MIGRANT SMUGGLING⁶⁴

- (a) Any person who engages in "migrant smuggling" as defined in Part 1, is guilty of an offence and is liable, upon conviction, to imprisonment for a term of _____.

situations not relating to trafficking. Certain existing provisions might need to be harmonized. The sentencing should reflect the fact that unlawful detention can range from a relatively minor to very serious offence depending on the circumstances. See also the amended Penal Code provisions re: detention in a brothel, section 144.

⁶¹ Traffickers often withhold or destroy the trafficked person's documents as a means of exercising control over that person. "Purported" is included as the documents being used may have been falsified or fraudulently obtained. Further research is needed to determine whether there is a general provision in the law relating to unlawful withholding of an official document (possibly under Passports Act or National Registration?) and whether it is sufficient for counter trafficking purposes. These provisions may need to be harmonized.

⁶² The Sub-committee thought the sentencing proviso should come out, and that the connection to trafficking should be part of the offence. Note, however, that adding a "purpose" to the offence increases the evidentiary burden on the prosecutor.

⁶³ This provision is included to ensure that the end users or exploiters of trafficked persons can be prosecuted. Arguably, some could be prosecuted for "receiving" a person for purposes of exploitation, but this provision can potentially reach a broader number of actors in the chain. It also seeks to strengthen existing penal code provisions on slavery and unlawful compulsory labour (Penal Code 261-263) by providing a definition consistent with international standards and a higher sentence. The sentence for this offence should be the same as for trafficking.

⁶⁴ Consider including as an amendment to the Immigration Act rather than as offence under this Act

- (b) For purposes of this section, it is immaterial whether the State into which “illegal entry” procured is Zambia or any other country.

PART III: MISCELLANEOUS CRIMINAL LAW PROVISIONS

9. OFFENCES COMMITTED BY A BODY OF PERSONS

Where an offence under this Act is committed by a body of persons, whether corporate or unincorporated ---

- (a) the body of persons shall be guilty of an offence and liable upon conviction to a fine not exceeding _____ penalty units; and
- (b) every person who, at the time of the offence, acted in an official capacity for or on behalf of such a body of persons, whether as an officer, manager, or other similar capacity, or was purporting to act in such capacity, and who was involved in the commission of the offence, shall be guilty of that offence; and punished accordingly.⁶⁵

10. AGGRAVATING FACTORS IN SENTENCING

In determining an appropriate sentence to be imposed upon a person convicted of trafficking in persons or any other offence under this Act, and without limitation on any other factors or circumstances which a court may take into account, a court shall regard it as an aggravating circumstance if the offence:⁶⁶

- (a) was committed for the purpose of sexual exploitation or resulted in sexual exploitation;
- (b) was accompanied by violence or the threat of violence, including any manner of sexual assault, against the trafficked person or any other person;
- (c) was committed repeatedly or against more than one person;
- (d) was committed by or in connection with an organized criminal group;
- (e) was committed against a person under the age of 18;
- (f) caused the trafficked person or another person to suffer serious personal injury or material harm; or
- (g) involved travel, whether actual, attempted, or intended, of the trafficked person across an international border.

⁶⁵ This section allows for criminal liability of legal entities as well as individual liability for officers/directors . See Money Laundering Act, section 8.

⁶⁶ This way of drafting “aggravating circumstance” still leaves considerable discretion to the court in sentencing. An alternative approach to consider would be to specify the sentence according to the aggravating circumstance, i.e. “if x occurs, then the person will be liable to a sentence of y ”; or alternatively, “if x occurs, then the sentence shall be increased by x years/amount or x%.” A number of countries have used this approach.

11. FORFEITURE OF PROPERTY

A person who is convicted of an offence under this Act shall be liable, in addition to any other penalty imposed under this Act, to forfeit to the State:

- (a) any property, benefit, payment, advantage, or profit received or derived, directly or indirectly, from the commission of an offence under this Act;⁶⁷ and
- (b) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of an offence under this Act.⁶⁸

12. COMPENSATION⁶⁹

- (a) Notwithstanding any other provision in Zambian law, the court, upon conviction of an accused person for an offence under this Act, shall, in addition to any other penalty which it imposes, make an order requiring the convicted person to pay effective compensation as the court may deem commensurate to possible damages available in a civil suit by the victim of the offence.⁷⁰
- (b) Compensation to the victim shall include compensation for material loss and/or personal injury in consequence of the offence committed, including psychological or emotional injury, unpaid wages, and/or the value of the victim's labour and/or services.
- (c) [OPTIONAL] In addition to any order for compensation to the victim in terms of subsections (a) and (b), and upon application by the prosecutor, the court may make an order for payment to the State or any other person of an amount in compensation for expenses incurred or reasonably expected to

⁶⁷ This language is based on that used in the ACC and Money Laundering Acts. US law uses the language: "any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation."

⁶⁸ This section probably needs a provision to exempt the "innocent owner" of property from forfeiture. With respect to procedure – it may be necessary to also address the possibility of obtaining a protective order prior to conviction (restraining order, injunction or any other measure to preserve the availability of property for forfeiture under this section] as well as to harmonize forfeiture provisions with those under the Money Laundering Act. With respect to proceeds, it may be necessary to refer to the Money Laundering Act. See also the Nigerian trafficking law (amended) for detailed asset forfeiture provisions.

⁶⁹ We probably need to include a provision to ensure that compensation to the victim takes precedence over forfeiture where the accused does not have sufficient assets to pay the victim compensation. In that case, the compensation award should be made out of the proceeds of the sale of forfeited property, with the balance going to the State. See, e.g., the South African POCA statute. It may also be necessary to include procedures for payment/recovery of compensation, if not provided for elsewhere in the law.

⁷⁰ This provision is based on Tanzania's compensation provision for sexual offences, and like Tanzania and the US, requires mandatory compensation commensurate with damages available in a civil suit. The purpose of this provision is to allow the court to order compensation as part of the criminal proceeding rather than requiring the victim to bring a civil suit. Alternatively, reference could be made to compensation under section 175 of the CPC, provided that the amount available under section 175 is reasonable. The limitation of this approach is that an award of compensation is entirely discretionary and requires application by the prosecutor. A middle road is to require the court to consider evidence with respect to compensation in every case, but to make the award discretionary.

be incurred in connection with the care, accommodation, transportation and repatriation of the victim of the offence.

13. ADDITIONAL PENALTIES

In addition to any other penalties available under this Act, the court may make an order [consistent with applicable law??] to:

- a) *close down any business whose activity is aimed at perpetrating or facilitating any offence under this Act;*
- b) *revoke relevant business licenses, and/or disqualify individuals or entities convicted of an offence under this Act from engaging in the same or similar types of business or professional activity.*⁷¹

14. ATTEMPT/CONSPIRACY

Any person who attempts or conspires to commit an offence under this act shall be guilty of committing that offence and shall be punished accordingly.

15. COUNSELING/PROCURING/ORGANIZING/DIRECTING

Any person who counsels, procures, organizes, or directs any person to commit an offence under this Act, shall be guilty of committing that offence and shall be punished accordingly.⁷²

16. AIDING/ABETTING

Any person who aids and abets any person to commit an offence under this Act, shall be guilty of an offence and shall be liable upon conviction to _____.⁷³

17. EXTRA-TERRITORIAL JURISDICTION

- (a) A court of the Republic has jurisdiction in respect of an act committed outside Zambia which would have constituted an offence or an essential element of an offence in terms of this Act had it been committed wholly inside Zambia, regardless of whether the act constitutes an offence or an essential element of an offence at the place of its commission, if:

⁷¹ Applicable laws in Zambia relating to the closure of businesses/revocation of licenses have not yet been identified. These should be reviewed and the provisions harmonized. Similar provisions are included in the Kosovo and Italian trafficking laws.

⁷² See, e.g. ACC Act, section 39. This may be combined with attempt and conspiracy. Note that "organizing and directing" is added per the Trafficking Protocol, as it is not clear that counseling or procuring are sufficient to capture these concepts.

⁷³ See e.g., Money Laundering Act section 9, where a lower penalty is provided for aiding and abetting. Aiders/abettors can also be included as a "principal" equivalent with counselors/procurers. How Zambia addresses this issue should depend on whether there is a high minimum sentence for the offences under the Act or more discretion in sentencing depending on the nature and extent of the person's participation in the crime.

- (i) the person to be charged is a citizen of Zambia, or is a person ordinarily resident in Zambia;
 - (ii) the person to be charged is a body of persons, whether incorporated or unincorporated, registered under any law of the Republic;
 - (iii) the act was committed partly inside and partly outside Zambia;
 - (iv) the act [was committed against a citizen or ordinary resident of Zambia]; or
 - (v) the offence is one constituted by extra-territorial acts or omissions.
- (b) Extra-territorial jurisdiction as set forth in section (1) shall apply equally to the principal offender and any person who aids, abets, counsels, procures, organizes or directs the principal offender.⁷⁴

18. EXTRA-TERRITORIAL CONSPIRACY

Any person who –

- (a) within Zambia, conspires with another person who is outside Zambia to commit an offence under this Act [or any other written law], notwithstanding where the offence is to be committed; or
- (b) from outside Zambia, conspires with another person inside or outside Zambia to commit an offence under this Act [or any other written law] in Zambia may be charged in Zambia with conspiracy to commit the crime concerned.

19. COGNIZABLE OFFENCE

Any offence under this Act shall be a cognizable offence.⁷⁵

20. EXTRADITION

An offence under this Act shall be deemed to be an extraditable offence under the provisions of the Extradition Act, CAP _____ Laws of Zambia.

⁷⁴ The intention here is to include and expand on section 6(2) of the Penal Code to allow jurisdiction over crimes committed partly inside and partly outside Zambia as well as any crime committed against Zambians outside national territory. The language still needs to be refined. The following option (Option 2) tries to use language similar to that used in existing Zambian provisions, such as ACC Act section 59 and section 6 of the Penal Code, but I find it rather cumbersome.

- (1) In relation to a citizen of Zambia, or a person ordinarily resident in Zambia, this Act shall have effect within as well as outside Zambia, and notwithstanding where any offence is committed by such person, he may be dealt with in respect of such offence as if it has been committed within Zambia.
- (2) Any person who does an act partly within and partly outside Zambia, or who does an act outside Zambia [against a citizen or ordinary resident of Zambia], which, if wholly done within Zambia, would be an offence under this Act, may be dealt with in respect of such offence as if the act had been committed wholly within Zambia.

⁷⁵ This allows a suspect to be arrested and searched without a warrant.

21. MUTUAL LEGAL ASSISTANCE [CHECK THIS]⁷⁶

An offence under this Act shall be deemed to be an offence under the provisions of the Mutual Legal Assistance in Criminal Matters Act, CAP _____ Laws of Zambia.

22. WITNESS PROTECTION

- (a) The State shall [endeavor to] provide police protection to any witness in a criminal case involving an offence under this Act, who has reason to believe that his or her safety or the safety of any related person is or may be threatened by reason of his or her being a witness.
- (b) [Such police protection shall be provided to the extent practicable, and in a manner that takes into account the age, circumstances, and best interests of the witness.]

23. PROSECUTION OF VICTIMS OF TRAFFICKING

- (a) A victim of human trafficking shall not be held criminally liable [charged/prosecuted] for a criminal offence committed as a direct result of his or her being trafficked.
- (b) No prosecution of a [identified, presumed or suspected] victim of human trafficking shall be instituted except by or with the written consent of the Director of Public Prosecutions.⁷⁷

PART IV: STATUS OF VICTIMS OF TRAFFICKING

24. IDENTIFICATION OF VICTIMS OF TRAFFICKING

- (a) Any law enforcement officer, public official or medical practitioner who has reason to believe that a person is or may be a victim of trafficking must report that belief [to X in the manner prescribed].
- (b) Where the presumed victim is a child, the law enforcement officer, public official or medical practitioner must also refer the child to the [Department of Social Welfare].

⁷⁶ Unlike the Extradition Act, where offences are contained in a Schedule of Offences, the offences covered by Mutual Legal Assistance agreements seem to be determined by the agreements themselves, and may vary from country to country. We have not yet determined whether we can include trafficking offences in Mutual Legal Assistance through a legislative provision, or whether this requires amendments to the treaties themselves.

⁷⁷ Note: UNHCHR guidelines at p. 3 "Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as a trafficked person." Such a policy increases the likelihood that trafficked persons will report to police and therefore that perpetrators rather than victims will be prosecuted. Allowance is made for prosecution in exceptional circumstances with consent by the DPP.

25. TEMPORARY RESIDENCE PERMIT

- (a) Notwithstanding the provisions of the Immigration Act, (CAP ____ Laws of Zambia), an immigration officer shall, in the prescribed manner and subject to the prescribed conditions, issue a temporary residence permit to a foreign victim of trafficking, regardless of his or her immigration status, to remain in the Republic for a period not exceeding 90 days, provided that –
 - (i) he or she is placed in the care of an accredited organization or any other person, organization or institution so authorized; and,
 - (ii) if the victim is a child, that he or she is referred to a designated social worker.
- (b) Any fee or security normally required for issuance of a temporary residence permit shall be waived for temporary residence permits issued pursuant to subsection (a).
- (c) The issuance of the temporary residence permit referred to in subsection (a) shall not depend upon the willingness of a victim of trafficking to cooperate with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons.
- (d) The temporary residence permit may be renewed or extended for up to 30 days if necessary:
 - (i) to ensure the safety or safe repatriation of the victim;
 - (ii) to allow the victim to participate as a witness in a criminal investigation or the prosecution of a criminal case;
 - (iii) to allow the victim to seek a civil or administrative remedy related to having been trafficked; or
 - (iv) for humanitarian reasons.
- (e) An extension or renewal beyond thirty days requires the approval of the Chief Immigration Officer.
- (f) Any law enforcement officer, public official or medical practitioner who has identified a person as a presumed victim of trafficking must inform that person of his or her right to apply for a temporary residence permit under this section.

26. ASYLUM

- (a) A foreign person who has been identified as a presumed victim of trafficking shall be:
 - (i) informed of the right to apply for asylum in terms of the Refugee Act, (CAP ____ Laws of Zambia);
 - (ii) referred to relevant authorities for a screening interview to assess whether the victim may have grounds to seek asylum;
 - (iii) assisted to apply for asylum where it appears that the victim would be eligible.

- (b) In the case of a victim of trafficking, an application for asylum shall not be disallowed on the grounds that the victim did not request asylum at the point of entry.

PART V. PROTECTION OF THE VICTIM OF TRAFFICKING

27. ACCESS TO LEGAL ASSISTANCE AND OTHER SERVICES

- (a) The State shall provide free emergency medical assistance to a presumed victim of trafficking, irrespective of his or her nationality or immigration status.
- (b) A victim of trafficking may be placed in the care of an accredited organization or any other person, organization or institution so authorized.
- (c) A child victim of trafficking shall be referred to a place of safety while his or her situation is investigated [by the Department of Social Welfare.]
- (d) A person who is a victim of trafficking and who has been issued with a temporary residence permit may access publicly-funded services, including health, education, training, and legal services in the same manner and on the same terms as a citizen or ordinary resident for the duration of his or her temporary residence.

28. PRIVACY

- (a) The name, photograph, and/or personal details of a victim of trafficking shall not be publicly disclosed or published in the media without the written consent of the victim.
- (b) Any person who publishes such information without the written consent of the victim commits an offence.

29. PROTECTION IN COURT PROCEEDINGS

- (a) Notwithstanding the provisions of any other law, the evidence of the complainant and of any child witness in a trial involving an offence under this Act shall be received by the court in camera and the evidence and witnesses involved in these proceedings shall not be published by or in any newspaper or other media.
- (b) A complainant or child witness may have a support person of his or her choosing accompany him or her during his or her testimony.

30 .CIVIL REMEDY

- (a) Any person who is a victim of an offence under this Act may bring a civil action against the perpetrator and may recover damages and reasonable attorneys fees.
- (b) An award of compensation under section 12 does not bar a civil action.

- (c) The court shall reduce the amount of damages recoverable in a civil action by the amount of any award of compensation made under section 12.

31. REPATRIATION ASSISTANCE

- (a) The Ministry of Home Affairs may not return a person who is an adult victim of trafficking to his or her country of origin or the country from where he or she has been trafficked⁷⁸ without giving due consideration to ___
 - (i) the safety of the person during the repatriation process;
 - (ii) the safety of the person in the country to which he or she is to be returned;
 - (iii) the possibility that the person might be harmed, killed or trafficked again;
 - (iv) where the victim is a child, the availability and suitability of care arrangements in the country to which the child is to be returned.
- (b) The Ministry of Home Affairs, in cooperation with the Ministry of Social Welfare, shall
 - (i) take reasonable steps to find an institution or organization that renders assistance to victims of trafficking in the country to which the person is to be returned and that is willing to provide assistance to such a person
 - (ii) inform the person of any arrangements that have been made for his or her reception in the country to which he or she is to be returned.
- (c) A child shall not be returned to his or her country of origin without the authorization of the Minister of Social Welfare [or the Juveniles Court].
- (d) Nothing in this section shall prohibit the return of an adult victim of trafficking to his or her country of origin or the country from where he or she has been trafficked where said person freely elects to do so.

32. TRAFFICKING OF A CHILD BY A PARENT OR LAWFUL CUSTODIAN

- (a) Any child who is a citizen or ordinary resident of Zambia who has been identified as a victim of trafficking shall be referred to the Juvenile Court.
- (b) If the Court has reason to believe that the parent or lawful custodian of the child has trafficked the child or allowed the child to be trafficked, the Court may suspend the parental rights and responsibilities of the parent or lawful custodian and place the child in temporary safe care, pending an inquiry by the Court.⁷⁹

⁷⁸ This could be expanded to include repatriation to the person's family or community where the person is a victim of internal trafficking.

⁷⁹ This provision will need to be harmonized with the provisions in the Juveniles Act pertaining to children in need of care and protection.

PART V: NATIONAL SECRETARIAT

[Provisions establishing a national secretariat to implement and coordinate the counter-trafficking program may be added here].

ANNEX A: ADDITIONAL LEGAL PROVISIONS FOR FURTHER CONSIDERATION

16/02/2007

HUMAN TRAFFICKING LEGISLATION: ADDITIONAL LEGAL PROVISIONS FOR FURTHER CONSIDERATION

I. Essential Provisions

- Immigration status of trafficked foreigner
 - o Temporary residence permit/ reflection delay 90 days
 - o Extension of temporary permit for duration of criminal/civil/administrative proceedings, where necessary for safety or other humanitarian reasons/ where participating in social-integration program
 - o Right to access public services during period of stay (medical, education, legal aid) (free?)
 - o May apply for permission to work during period of temporary residence
 - o Procedure for requesting/Conditions for granting of residence permit
 - o Applications for asylum/refugee status
 - o Family reunification??
[NOTE: Could also address as amendment to Immigration Act/Regulations]

- Compensation/restitution
 - o Right to apply for compensation upon conviction in criminal proceedings (can also make restitution to victim/State mandatory as per US/Tanzania)
 - o Right to institute civil claim
 - o Victim Assistance Fund?

- Seizure/Forfeiture of Assets
 - o Property subject to seizure (criminal gains/instrumentalities)
 - o Procedure/Mechanism? (Criminal or Civil/ securing funds etc.)
 - o What happens to forfeited funds? (State generally, Trafficking Fund, use for victim compensation/restitution – i.e. priority claim?)
[NOTE: this section will require further consultation to determine workable procedure/mechanism and to harmonize with ML Act provisions]
- Victim Safety/Witness Protection
 - o Safety plan?
 - o Eligibility for witness protection: during investigations/prosecutions
[check also DEC informant provisions]
 - o Protection for family in country of origin?
- Victim-friendly court procedures
 - o Information to victims
 - o Opportunities to participate/have concerns taken into account (bail/sentencing/etc.)
 - o Procedures/mechanisms (i.e. clearing court, in camera hearings, media ban, intermediary, support person/witness legal advisor/ interpreter, examination by CCTV?, separate waiting rooms)
 - o Restrictions on introduction of evidence of character or sexual history (i.e. South Africa/Tanzania/Kosovo)
[NOTE: May not be needed: Check adequacy of current provisions in CPC)
 - o Witness preparation?

II. Recommended provisions

- National Secretariat
 - o Establish National Secretariat
 - o Board of Directors?
 - o Mandate
 - o Resources?
- Identification/Referral/Services re: Trafficked Persons
 - o “Presumed Trafficked Person”
 - o Duty of public officers to refer
 - o Identification guidelines (i.e. South Africa)??
 - o Safe shelter/ no detention
 - o Access/ provision of services (including legal counseling)
 - o Duty of missions abroad to assist trafficked persons?

- Financial Support to organizations providing services to victims (i.e. through Social Welfare?)??
- Privacy/Confidentiality provisions
 - o No publication of victim/witness identity/photograph (offence)
 - o Confidentiality (i.e. for counselors)?
 - o Data protection/confidentiality?
- Children
 - o Special protections/procedures for children??
 - o Best interests of the child?
 - o Role of Social Welfare/ Juvenile Court with respect to child (i.e. Ghana/South Africa)
 - o Appointment of legal representative/Guardian [Discuss with Social Welfare]
- Facilitation of trafficking by negligence (i.e. Kosovo) (lesser offence)
- Parental consent for children traveling across international borders? [Note: could also be amendment to Immigration Code. Discuss with Immigration]

III. Optional provisions

- Action Plans: instructions to develop plans/systems/etc to implement policy provisions (i.e. victim protection system, assistance to victims trafficked abroad, etc.)
- Human Trafficking/Victim Assistance Fund
 - o Establishment of Fund
 - o Sources of funds (including forfeited assets)
 - o Use/Application of funds
 - o Management of Fund/ Accounts/Auditing
 - o Disbursement Procedures
- Task Force (National Technical Committee) ?
 - o Establishment
 - o Composition/Rank
 - o Functions
 - o Meetings, etc.
- Other Trafficking Protocol provisions
 - o Duty of state to verify identity/nationality; facilitate repatriation/issuance of travel documents etc.
 - o Verification of travel/identity documents
 - o Data collection

- o International cooperation
 - o Training
- Migrant Worker Protections (i.e. US/ ILO recommends)

ANNEX B: CONSULTATION WORKSHOP AGENDA

HUMAN TRAFFICKING CONSULTATION WORKSHOPS AGENDA

Moderator: Comm. R Mungole

DAY 1:

- 8:00-8:30 Registration
- 8:30-8:45 Welcome remarks – Mrs. A.C. Nhekairo
Introductions/expectations
- Official opening by Minister or provincial counterpart
- 8:45-9:00 Workshop objectives, structure and agenda
- 9:00-10:45 Video presentation
Reactions to video
Discussion re: participants' experience with human trafficking in
Zambia: issues and challenges
- 10:45-11:00 Tea break
- 11:00-12:00 Presentation: Jill Thompson, Legal Consultant
The UN Trafficking Protocol
Elements of an effective and comprehensive anti-trafficking strategy:
the “3 P’s” (prevention, protection, and prosecution) and cross-cutting
issues (roles and responsibilities, coordination, regional cooperation,
capacity building, special needs of children)
Legal and Policy Issues
- 12:00-12:15 Instructions for afternoon working groups: objectives, discussion
questions, appointment of facilitator/ rapporteur, and presenter(s).
- 12:15-1:00 Working Group discussions

Group 1: Prosecution	Group 2: Protection	Group 3: Prevention
	Identifying trafficked persons	
Trafficking offence(s)	Legal status (immigration)	Underlying causes (push factors), vulnerable groups
Strengthening/harmonizing existing criminal offences (penal, immigration, labour, etc.)	Services: shelter, medical, legal, counseling, etc.	Addressing demand (pull factors)
Organized crime/money laundering/asset forfeiture	Legal proceedings and compensation	Border/passport controls
Witness cooperation/protection	Witness protection	Employment recruitment
Specialization/roles and responsibilities of various law enforcement agencies	Repatriation assistance (to and from Zambia)	Corruption
	Special needs/rights of children	Public education/media
Coordination, regional cooperation, capacity building	Coordination, regional cooperation, capacity building	Coordination, regional cooperation, capacity building

- 1:00-2:00 Lunch
- 2:00-3:15 Reconvene Working Groups
- 3:15-3:30 Tea Break
- 3:30-4:30 Working Groups continue
- 4:30-5:00 Reconvene Plenary: Day 1 wrap up

DAY 2:

- 8:30-9:00 Welcome and overview of previous day.
- 9:00-10:00 Working Groups (Final round)
Summarize recommendations and issues for group discussion and input.
- 10:00-10:15 Tea Break
- 10:15 Reconvene Plenary

- 10:30-11:45 (In Plenary) Presentation of issues/recommendations and group discussion/debate
Working Group 1 (PROSECUTION)
- 11:45-1:00 (In Plenary) Presentation of issues/recommendations and group discussion/debate
Working Group 2 (PROTECTION)
- 1:00-2:00 Lunch
- 2:00-3:30 Working Group presentation and group discussion/debate
Group 3 (PREVENTION)
- 3:30-4:30 Planning/Coordination/Monitoring/Capacity building: legal and policy recommendations
- 4:30-5:00 Day 2: Conclusions and Wrap up.

ANNEX C: SOW FOR ASSIGNMENT

HUMAN TRAFFICKING LEGISLATION FOR ZAMBIA STATEMENT OF WORK Legal Consultant

1. Purpose

The purpose of this contract is to hire a consultant to review existing laws and the legal system as it pertains to the penalties for Human Trafficking, provide guidance on measures to strengthen the government and institutional responses to trafficking, and to draft the Bill and Policy framework.

2. Background

An estimated 800,000 to 900,000 persons are trafficked every year world-wide (U.S. Department of State 2003). Zambia has not been spared. Zambia is seen as a source, destination and transit country for trafficking in persons, and the Zambia Government has noted increasing numbers of reported cases in the past several years. Although human trafficking is an age-old practice, Zambia recorded its first case of trafficking in December, 1999. An Australian male was arrested at the Chirundu border post while allegedly trying to export five Zambia teenage girls to Australia for purposes of prostitution. The man was acquitted on the grounds of inadequate legal provisions to deal with such cases (Times of Zambia, 14 July, 2003). Five years later, another clear-cut case of human trafficking occurred in Zambia when a Congolese woman was caught traveling with 14 children en route to South Africa. Once again, the Zambian laws were inadequate for prosecution and the woman was only charged Two (2) million Kwacha for passport fraud and was later released (Times of Zambia, June 2005).

According to the US Government (Trafficking in persons Report 2005) Zambia has moved from the Tier 2 watch list to Ties 2. The Report states that the Government of Zambia does not fully comply with the minimum standards for the elimination of trafficking; however it is making significant efforts to do so.

During the past years, Zambia has demonstrated significant progress in its effort to combat trafficking in persons. While there is no specific anti-trafficking law, the country's laws criminalize the full scope of trafficking in persons, including trafficking for sexual exploitation and fraudulent labor recruitment. In November, 2004, the Zambian parliament passed comprehensive Child Protection Legislation that prohibits all forms of slavery, as well as procuring or offering a child for illicit

activities, including prostitution.¹ And in 2005, Parliament amended the Penal Code, Cap 87 of the Laws of Zambia to provide for the crime of human trafficking. However, the amendment Act is not adequate. This, though a step forward, has not helped much for it does not address all activities connected with human trafficking.

Trafficking in humans thrives in an environment of poverty and deprivation. Statistics in Zambia can be overwhelming. Poverty indicators show the following:²

- *Nearly 70% of Zambia lived below poverty datum line in 1996.*
- *The percentage of persons living in poverty in rural areas is considerably higher than in urban areas. Unemployment rates are pegged at 50%*
- *In 1997, the Per Capita Income was US\$ 308.*
- *Nearly three quarters of Zambia's children live below the poverty datum line with little notable quantitative or qualitative differences between orphans/vulnerable children and others.*

Adding to the risk factor of poverty, the HIV/AIDS pandemic in Zambia has contributed to the rise in orphans and street children, who are targets for human traffickers because they lack the community safety net for protection. In 2004, it was estimated that nearly one million Zambians are HIV-positive with an anticipated 100,000 new AIDS cases by the end of that year. The number of orphans in Zambia is nearing one million.

3. Tasks for Consultant

The tasks for the consultant include, but are not limited to:

3.1 Consultation with Stakeholders

The Consultant will work directly with the Ministry of Home Affairs, USAID, US Government, Ministry of Justice and the Zambia Law Development Commission. In addition, the Consultant will consult with the National Task Force on Human Trafficking, which includes representatives from:

Ministry of Home Affairs
Department of Immigration
Drug Enforcement Commission
Anti-corruption Commission
Department of Police – Victim Support Unit and Prosecutions
Zambia Prisons Service
Department of National Registration, Passport and Citizenship
Ministry of Youth, Sport and Child Development
Ministry of Education
Ministry of Labor and Social Security

¹ US Government (2005) Trafficking in persons report.

² UNDP-Structural Injustice and the MDGs: a critical analysis of the Zambia Experience and 1996 Living Conditions and Monitoring Survey report and 198 Human Development Report

Ministry of Foreign Affairs
Ministry of Community Development and Social Welfare
Ministry of Information and Broadcasting Services
Office of the President
Gender in Development Division (Cabinet Office)

Others

The Anglican Project
United Nations International Childrens Emergency Fund
International Organization for Migration (IOM)
Young Women Christians Association (YWCA)
Jesus Cares Ministry
Royal Establishments
The Church Movement, etc...

3.2 Literature and Code Review

The Consultant will review all relevant literature, and conduct research on relevant lessons on counter trafficking laws and policies with focus on Africa, especially within the SADC member states.

3.3 Report on Legal System Issues

The consultant will:

- 3.3a Examine, with a view to establishing stronger legal protection for trafficked victims, the existing administration support system and enforcement mechanisms.
- 3.3b Determine the impact of traditions, cultures and customary laws and practices on the rights of women and children and how they contribute to human trafficking.
- 3.3c Examine and determine the extent to which Employment Agencies and Recruitment Centres facilitate human trafficking.
- 3.3d Make recommendations to the government on measures to strengthen laws, administrative and enforcement mechanisms and support systems dealing with human trafficking.
- 3.3e Examine the existing labor laws especially those relating to children and young persons and how they contribute to human trafficking.

3.4 Drafting Human Trafficking Legislation and the policy framework

The consultant will:

- 3.4a Conduct in-depth analysis of the current legal framework available to address human trafficking.
- 3.4b Identify gaps and develop recommendations for reform in the area of prosecution, prevention and victim assistance
- 3.4c In cooperation with the Legal Liaison from the Ministry of Justice Prepare the Report, draft policy and draft Bill to be presented to the Minister of Justice.

4. Consultant Qualifications

Consultant should hold a Bachelor of laws degree (LLB), Masters of Laws (LLM) is preferred and have experience in legislative drafting. Consultant should have working knowledge of counter trafficking legislation, experience in Southern/Eastern Africa is preferred.

5. Deliverables and Schedule

5.1 Literature and Code Review/Preparatory Work

In consultation with the team in Zambia, the consultant will identify documents, laws, etc. still needed for review and agree on consultation and site visit approach/strategy. The consultant will review documents and relevant code sections, collect comparative trafficking law models, identify information gaps and issues for discussion and debate, and begin drafting "issue paper" for discussion during consultations.

Schedule: Sept 18- October 3 (8-10 days total)

5.2 Finalize Issue Paper

Consultant with the Legislation and Policy Sub-Committee, complete the code and literature review, and finalize the issue paper. Following this time the team in Zambia will draft and send out invitations, accompanied by the issue paper, for consultation meetings and border visits, handling logistics for consultation meetings, travel, etc. Schedule: October 4-6 (3 days of consultant in Zambia); October 9-17 (circulation of issue paper)

5.3 Consultations and Study Visits

Conduct consultations and site visits, including:

- 5.3a Lusaka Consultative Meeting and Chirundu border visit
The team will hold a two day consultative meeting in Lusaka with a one day visit to Chirundu to conduct site interviews with security personnel, border control officials and other relevant stakeholders. Schedule October 18-21 (4 days with travel)
- 5.3b Kitwe Consultative Meeting and Kasumbalesa border visit
The team will hold a two day consultative meeting in Kitwe with a one day field study to be conducted at Kasumbalesa which borders with Congo DR.
Schedule: October 23-27 (5 days with travel)
- 5.3c Livingstone Consultative Meeting and Kazungula border visit
A two day consultative meeting will be held in Livingstone, with a one day site study at Kazungula Border point to conduct interviews with relevant stakeholders.
Schedule October 30-November 2 (4 days including travel)

5.5 Team Debriefs

Team de-briefs regarding results of consultation and study visits. Discuss and agree on policy/legislative strategy. Prepare outline of report/policy framework. Identify any outstanding issues and persons/orgs to consult for inputs.

Schedule: November 3-4 (2 days)

5.6 Drafting of the Bill and Policy framework

The consultant drafts the legislation and policy framework document.

Schedule: November 6-22 (12 LOE days with Jill returning home for 4-5 days)

5.7 Submission of the draft bill and policy framework.

The draft bill and policy framework document will be circulated among stakeholders, including the Legislation and Policy Sub-Committee, for review (Not included in LOE, Jill home).

Schedule: November 23-December 1

5.8 Revisions and Finalization

Hold a one day stakeholder symposium to discuss draft and comments/ changes/ questions. Revisions and Finalization of report.

Schedule: December 4-8 (5 days)

6. Reporting Requirements

The consultant shall report directly to the task order chief of party, Tracy Johnson.

The consultant shall work under the technical direction of the USAID/Zambia Mission and the Permanent Secretary at the Ministry of Home Affairs.

7. Estimated Level of Effort

The estimated level of effort for this activity is 45 days.