



# NAMIBIA

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law Customary Law	Written	Yes	Single State	Republic

## 1. INTRODUCTION

### 1.1. Namibia and Modern Slavery (Human Trafficking)

Namibia’s hybrid legal system falls under the branch of common law known as Roman-Dutch law.<sup>1</sup> Namibia’s law stems from six different sources: (1) The Constitution of the Republic of Namibia, (2) Acts of Parliament, (3) international law, (4) case law, (5) common law, and (6) customary laws.<sup>2</sup>

In April 2018, the Government enacted the Combating of Trafficking in Persons Act 1 of 2018, effective November 2019, which “criminalized sex trafficking and labour trafficking and prescribed penalties of up to 30 years’ imprisonment, a fine not exceeding [NAD 1,000,000] ([USD] 68,150), or both. These penalties were ... commensurate with punishments prescribed for other serious crimes, such as kidnapping.”<sup>3</sup>

According to the 2021 U.S. Department of State Trafficking in Persons Report:

- Namibia is ranked as a Tier 1 country:

The Government of Namibia fully meets the minimum standards for the elimination of trafficking. The government continued to demonstrate serious and sustained efforts during the reporting period, considering the impact of the COVID-19 pandemic on its anti-trafficking capacity; therefore Namibia remained on Tier 1. These efforts included training social workers on the National Referral Mechanism (NRM) and Standard Operating Procedures (SOPs) on victim identification, referring identified victims to care, and allocating more funding to NGOs and shelters supporting trafficking victims. Although the government meets the minimum standards, it identified fewer victims and did not initiate any new prosecutions of alleged traffickers. Occasional breakdowns in communication between government officials and civil society and within government ministries led to a lack of coordination among members of the National Coordinating Body (NCB).<sup>4</sup>

<sup>1</sup> Researching Namibian Law and the Namibian Legal System, Section 1, available at: <https://www.nyulawglobal.org/globalex/Namibia1.html>.

<sup>2</sup> *Id.*, Section 3.

<sup>3</sup> U.S. Dep’t of State, Trafficking in Persons Report 407 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>; see also Combating of Trafficking in Persons Act 1 of 2018, chapter 2, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>4</sup> U.S. Dep’t of State, Trafficking in Persons Report 406-07 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>. The U.S. Department of State rankings are based on the minimum standards specified in the U.S. Trafficking Victims Protection Act of 2000, “which are generally consistent with the [UN] Palermo Protocol.” *Id.* at 51.

- Several types of human trafficking are prevalent in Namibia:
  - “[T]raffickers exploit domestic and foreign victims in Namibia, and traffickers exploit victims from Namibia abroad. Some victims are initially offered legitimate work for adequate wages, but then traffickers subject them to forced labor in urban centers and on commercial farms.”<sup>5</sup>
  - “Traffickers subject Namibian children to forced labor in agriculture, cattle herding, and domestic service, and sex trafficking. ... Among Namibia’s ethnic groups, San and Zemba children are particularly vulnerable to forced labor on farms or in homes.”<sup>6</sup>
  - Traffickers also subject children from other countries to forced labour in various industries in Namibia, including sex trafficking and street vending in Windhoek and other cities, and in the fishing sector.<sup>7</sup> For example, “[t]raffickers may bring Angolan children to Namibia for forced labor in cattle herding, agricultural work, and domestic servitude.”<sup>8</sup>
  - Individuals from Angola, Kenya, Zambia, and Zimbabwe may be exploited by traffickers in sex trafficking and forced labour.<sup>9</sup>
  - “An NGO noted an increase in exploitation of Namibians seeking economic opportunity abroad, in part due to the pandemic,” and noted an increase in the use of online tools (e.g., social media) “to advertise false jobs and groom individuals.”<sup>10</sup>
  - “Traffickers allegedly operate at the international airport.”<sup>11</sup>

Namibia’s National Coordinating Body (**NCB**) coordinates the government’s anti-trafficking efforts. The Ministry of Gender Equality, Poverty Eradication, and Child Welfare (**MGEPECW**) acts as the NCB’s chair.<sup>12</sup> Recent protection and prevention efforts in Namibia include:

- The MGEPECW’s development of, in 2018, the National Referral Mechanism (**NRM**) and Standard Operating Procedures (**SOPs**) for the Identification, Protection, Referral, and Safe Return of Victims of Trafficking in Namibia;<sup>13</sup>
- Increased funding (NAD 6 million, or USD 408,910) to NGOs and shelters that support trafficking victims;<sup>14</sup>

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<sup>5</sup> *Id.* at 408.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 407.

<sup>13</sup> Ministry of Gender Equality and Child Welfare, National Referral Mechanism and Standard Operating Procedures for the Identification, Protection, Referral and Safe Return of Victims of Trafficking in Namibia (2018), available at: <https://mgepesw.gov.na/documents/792320/918990/NATIONAL+REFERRAL+MECHANISM+AND+STANDARD+OPERATING+PROCEDURES+FOR+THE+IDENTIFICATION%2C+PROTECTION%2CREFERRAL+AND+SAFE+RETURN+OF+VICTIMS+OF+TRAFFICKING+IN+NAMIBIA.pdf/56cca9d4-75ad-0cd6-4638-89172b2fb39c?version=1.0&download=true>.

<sup>14</sup> U.S. Dep’t of State, Trafficking in Persons Report 407 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

- “Seventeen Gender-based Violence Protection Units nationwide offered initial psycho-social, legal, and medical support to victims of crime, in coordination with the police, the [MGEPECW], the Ministry of Health and Social Services, and NGOs”;<sup>15</sup>
- Sponsoring events and actions to raise awareness of trafficking issues, including: an in-person commemoration of World Day against Trafficking in Persons; NCB member discussion of trafficking reporting and trends on television; and continued circulation of trafficking awareness electronic and hard-copy materials.<sup>16</sup>
- The continued implementation of a hotline that operates from 8:00 am to 10:00 pm daily;<sup>17</sup>
- “With support from an international organization, the government contributed information to a centralized anti-trafficking database that collected national data on cases and victims identified and shared it with countries in the region”;<sup>18</sup>
- To reduce improper recruitment into trafficking, Namibian law regulated “recruitment agencies and banned employee-paid recruitment fees,” and “[t]he Ministry of Labor, Industrial Relations, and Employment Creation oversaw recruitment agency licensing and managed a database registering job seekers, coordinating overseas job placements, and monitoring employees’ arrival in their intended destinations.”<sup>19</sup>

## 1.2. Namibia’s Policy and Legal Position

The Constitution of the Republic of Namibia, adopted in 1990, is “the Supreme Law of Namibia” and prevails over all other laws.<sup>20</sup> Chapter 3 of the Constitution protects fundamental human rights and freedoms including, but not limited to, life,<sup>21</sup> personal liberty,<sup>22</sup> and the respect of human dignity.<sup>23</sup> The Constitution allows any aggrieved person claiming an actual or threatened infringement of a fundamental right or freedom to seek a judicial remedy or to approach the Ombudsman for legal assistance.<sup>24</sup>

Namibia’s domestic laws prohibiting slavery and human trafficking supplement constitutional protections. Further, Namibia has ratified, or acceded to, other conventions, laws, protocols, and regulations that safeguard fundamental human rights, and it has bilateral law enforcement cooperation agreements with Zimbabwe and Angola.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 408.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> The Constitution of the Republic of Namibia, Chapter 1, Article 1(6), available at: <https://www.kas.de/en/web/namibia/single-title/-/content/the-constitution-of-the-republic-of-namibia>.

<sup>21</sup> *Id.*, Chapter 3, Article 6.

<sup>22</sup> *Id.*, Chapter 3, Article 7.

<sup>23</sup> *Id.*, Chapter 3, Article 8.

<sup>24</sup> *Id.*, Chapter 3, Article 25(2).

Namibia developed and implemented a six-year, anti-trafficking national action plan (**NAP**) spanning years 2019–2024. This NAP against gender-based violence addresses all forms of trafficking.<sup>25</sup>

## 2. OVERVIEW OF NAMIBIA’S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

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### 2.1. Namibia’s Regional and International Law Obligations

#### 2.1.1. *Fundamental human rights*

Namibia has ratified or acceded to numerous international conventions relating to fundamental human rights, including:

- Convention on the Elimination of All Forms of Discrimination against Women (1979) (acceded 1992),<sup>26</sup> and the relevant Optional Protocol (ratified 2000);<sup>27</sup>
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (acceded 1994);<sup>28</sup>
- Convention on the Rights of Persons with Disabilities (2006) (ratified in 2007)<sup>29</sup> and the relevant Optional Protocol;<sup>30</sup>
- ILO Convention (C. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) (ratified in 2000);<sup>31</sup>
- Convention on the Rights of the Child (1989) (ratified in 1990),<sup>32</sup> and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (ratified in 2002);<sup>33</sup>

<sup>25</sup> U.S. Dep’t of State, Trafficking in Persons Report 407–08 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>; see also Namibia National Action Plan on Women Peace and Security (2019), available at: <http://1325naps.peacewomen.org/wp-content/uploads/2020/12/Namibia-NAP-2019-2024.pdf>.

<sup>26</sup> Convention on the Elimination of All Forms of Discrimination against Women (1979), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en).

<sup>27</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=en).

<sup>28</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en).

<sup>29</sup> Convention on the Rights of Persons with Disabilities (2006), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en).

<sup>30</sup> Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=en).

<sup>31</sup> ILO Convention (C. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182).

<sup>32</sup> Convention on the Rights of the Child (1989), available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>33</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000), available at: <https://www.ohchr.org/en/professionalinterest/pages/opsccrc.aspx>.

- African Charter on the Rights and Welfare of the Child (1990) (ratified in 2004);<sup>34</sup> and
- Stockholm Declaration and Agenda for Action (1996).<sup>35</sup>

Namibia is a signatory to the SADC Protocol on Mutual Legal Assistance in Criminal Matters.<sup>36</sup> Namibia is a State Party to the African Charter on Human and People’s Rights (**ACHPR**), the International Covenant on Civil and Political Rights (**ICCPR**), and the Universal Declaration of Human Rights (**UDHR**).<sup>37</sup>

### 2.1.2. *Slavery and trafficking*

In 2002, Namibia ratified the United Nations Convention against Transnational Organized Crime and the optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>38</sup> In 2002, Namibia ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000).<sup>39</sup>

### 2.1.3. *Effect under Namibia’s law*

Article 32(3)(e) of the Constitution permits the President to “negotiate and sign international agreements, and to delegate such power.”<sup>40</sup> Article 63(2)(e) of the Constitution authorizes the National Assembly to “agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article 32(3)(e) hereof.”<sup>41</sup> Further, Article 143 of the Namibian Constitution provides, “[a]ll existing international agreements binding upon Namibia shall remain in force, unless and until the National Assembly acting under Article 63(2)(d) hereof otherwise decides,”<sup>42</sup> and Article 144 makes clear that “general rules of public international law and international agreements binding upon Namibia ... shall

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<sup>34</sup> African Charter on the Rights and Welfare of the Child (1990), available at: <https://au.int/en/treaties/african-charter-rights-and-welfare-child>.

<sup>35</sup> Stockholm Declaration and Agenda for Action (1996), available at: [https://www.dji.de/fileadmin/user\\_upload/izkk/StockholmAgenda1996.pdf](https://www.dji.de/fileadmin/user_upload/izkk/StockholmAgenda1996.pdf).

<sup>36</sup> Protocol on Mutual Legal Assistance in Criminal Matters (2002), available at: <https://www.sadc.int/documents-publications/show/807>.

<sup>37</sup> John Nakuta, The Justice Sector & Rule of Law in Namibia, available at: [https://www.nid.org.na/images/pdf/democracy/Criminal\\_Justice\\_System\\_Namibia.pdf](https://www.nid.org.na/images/pdf/democracy/Criminal_Justice_System_Namibia.pdf).

<sup>38</sup> Ministry of Gender Equality and Child Welfare, A Baseline Assessment of Human Trafficking in Namibia, A Nationally Representative Qualitative Assessment (2009), pp. 39–40, available at: [https://pdf.usaid.gov/pdf\\_docs/PA00BJQ.pdf](https://pdf.usaid.gov/pdf_docs/PA00BJQ.pdf); see also Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en).

<sup>39</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air (2002), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-b&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-b&chapter=18&clang=en).

<sup>40</sup> The Constitution of the Republic of Namibia, Chapter 7, Article 32(3)(e), available at: <https://www.kas.de/en/web/namibia/single-title/-/content/the-constitution-of-the-republic-of-namibia>.

<sup>41</sup> *Id.*, Chapter 7, Article 63(2)(e).

<sup>42</sup> *Id.*, Chapter 20, Article 143.

form part of the law of Namibia.”<sup>43</sup> Article 144 also states that international law is subject to the Constitution and Acts of Parliament.<sup>44</sup>

Namibia enacted the Combating of Trafficking in Persons Act 1 of 2018 “to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.”<sup>45</sup>

## 2.2. Human Rights Protections Under Namibia’s Law

Chapter 3 of Namibia’s Constitution “contains a Bill of Rights with a comprehensive catalogue of entrenched fundamental human rights and freedoms which may never be abolished or diminished, not even by a two-thirds majority in Parliament.”<sup>46</sup> The Constitution also mandates that no person shall “be held in slavery or servitude” or “be required to perform forced labour,”<sup>47</sup> and Article 95 of the Constitution obligates the State to ensure the protection and welfare of all people, even in the face of abuse and exploitation.<sup>48</sup> The Constitution requires that “marriage shall be entered into only with the free and full consent of the intending spouses,” and it protects children from economic exploitation and work under the age of 14.<sup>49</sup>

Namibia’s legislation to protect human rights has evolved. The Combating of Immoral Practices Act (No. 21 of 1980) prohibited certain practices of solicitation and prostitution. In 2000, an amendment prohibited certain statutory rape (sex with a child under 16 years of age if three years older than the child), and enacted the Combating of Rape Act.<sup>50</sup> In 2004, Namibia enacted the Prevention of Organised Crime Act (No. 29) (POCA).<sup>51</sup> POCA prohibited smuggling of migrants and trafficking in persons, and set forth a fine and imprisonment for violations.<sup>52</sup> However, POCA failed to outline the protection and support of trafficking victims and did not distinguish between the trafficking of adults and children.<sup>53</sup> The Labour Act (No. 11 of 2007) banned forced labour and labour by children under the age of 14 years old, and it regulated the work

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<sup>43</sup> *Id.*, Chapter 21, Article 144. However, “Namibian courts have not yet authoritatively settled the issue as to whether ratified treaties apply directly and automatically,” as some lawyers and judges have maintained that international treaties do not apply as such. Researching Namibian Law and the Namibian Legal System, Section 3.3, available at: <https://www.nyulawglobal.org/globalex/Namibia1.html>.

<sup>44</sup> The Constitution of the Republic of Namibia, Chapter 21, Article 144, available at: <https://www.kas.de/en/web/namibia/single-title/-/content/the-constitution-of-the-republic-of-namibia>.

<sup>45</sup> Combating of Trafficking in Persons Act 1 of 2018 (GG 6562), at 1, available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>46</sup> The Constitution of the Republic of Namibia, at 13, available at: <https://www.kas.de/en/web/namibia/single-title/-/content/the-constitution-of-the-republic-of-namibia>.

<sup>47</sup> *Id.*, Chapter 3, Article 9.

<sup>48</sup> *Id.*, Chapter 11, Article 96.

<sup>49</sup> *Id.*, Chapter 3, Article 14(2), Article 15(3).

<sup>50</sup> The Combating of Immoral Practices Amendment Act (1980), available at: [https://www.lac.org.na/laws/annoSWA/CRIMINAL%20LAW%20AND%20PROCEDURE%20\(1980\)%20-%20Combating%20of%20mmoral%20Practices%20Act%2021%20of%201980%20\(annotated\).pdf](https://www.lac.org.na/laws/annoSWA/CRIMINAL%20LAW%20AND%20PROCEDURE%20(1980)%20-%20Combating%20of%20mmoral%20Practices%20Act%2021%20of%201980%20(annotated).pdf); Combating of Rape Act, available at: <https://www.lac.org.na/laws/annoSTAT/Combating%20of%20Rape%20Act%208%20of%202000.pdf>.

<sup>51</sup> A Baseline Assessment of Human Trafficking in Namibia, A Nationally Representative Qualitative Assessment, Ministry of Gender Equality and Child Welfare In collaboration with the Ministry of Agriculture, Water & Forestry, 40 (June 2009), available at: [https://pdf.usaid.gov/pdf\\_docs/PA00BJQ.pdf](https://pdf.usaid.gov/pdf_docs/PA00BJQ.pdf).

<sup>52</sup> *Id.*, pp. 40–41.

<sup>53</sup> *Id.*, p. 41.

that children ages 14 to 16 can do.<sup>54</sup> Most recently, Namibia enacted the Combating of Trafficking in Persons Act 1 of 2018.<sup>55</sup>

### 2.3. Criminalization of Modern Slavery

The Combating of Trafficking in Persons Act 1 of 2018 provides criminal penalties for trafficking in persons and related offences.<sup>56</sup>

### 2.4. Supply Chain Reporting

No legislation or policies require reporting of human trafficking in supply chains or oblige private businesses to control their supply chains to hinder human trafficking.

### 2.5. Investigation, Prosecution, and Enforcement

#### 2.5.1. Investigation and prosecution of criminal offenses

The Namibian Police Force is responsible for public safety and order. The Police Act regulates the Police Force.<sup>57</sup> Other related legislation includes the Criminal Procedure Act, the Prevention of Organized Crime Act, and the Municipal Police Services Regulations. Police accountability mechanisms, established in the Constitution, include “the security commission, the Ombudsman, the Prosecutor-General, and the Auditor-General.”<sup>58</sup> The Police Force’s Crime Investigation Division has a Serious Crime Investigation Unit and a Women and Child Protection Unit.<sup>59</sup>

In 2020, specialized prosecutors within the Office of the Prosecutor General’s Sexual Offences Unit “prosecuted all trafficking cases in the High Court and worked closely with prosecutors on cases indicted outside of the High Court.”<sup>60</sup>

Pursuant to The Combating of Trafficking in Persons Act 1 of 2018, “A person who has information about the trafficking of a person or reasonably suspects that a person is being trafficked must make a report to a police officer or a state employed social worker.”<sup>61</sup> If the police officer receives a report and reasonably suspects that trafficking is occurring, the police officer must make a report to a state employed social

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<sup>54</sup> *Id.*, p. 42.

<sup>55</sup> Combating of Trafficking in Persons Act 1 of 2018, available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>; see also U.S. Dep’t of State, Trafficking in Persons Report 407 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

<sup>56</sup> Combating of Trafficking in Persons Act 1 of 2018, available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>57</sup> Police Act of 1990, available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=90646&p\\_country=NAM&p\\_count=141&p\\_classification=01.04&p\\_classcount=17](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90646&p_country=NAM&p_count=141&p_classification=01.04&p_classcount=17).

<sup>58</sup> John Nakuta, *The Justice Sector & Rule of Law in Namibia*, p. 9, available at: [https://www.nid.org.na/images/pdf/democracy/Criminal\\_Justice\\_System\\_Namibia.pdf](https://www.nid.org.na/images/pdf/democracy/Criminal_Justice_System_Namibia.pdf).

<sup>59</sup> *Id.*, pp. 9–10.

<sup>60</sup> U.S. Dep’t of State, Trafficking in Persons Report 407 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

<sup>61</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 3(12)(1), available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

worker.<sup>62</sup> If the state employed social worker receives a credible report, they must determine whether the person is a victim of trafficking and, if that person is a victim, issue to that person a document indicating that the person is a victim of trafficking.<sup>63</sup>

### 2.5.2. *Mutual assistance/international cooperation*

The Namibian Government maintains “bilateral law enforcement cooperation agreements with Zimbabwe and Angola.”<sup>64</sup> Namibia entered into the International Co-operation in Criminal Matters Act 9 in 2000, which sets forth a framework for mutual legal assistance and international cooperation.<sup>65</sup> Namibia also participates in the SADC Protocol on Mutual Legal Assistance in Criminal Matters.<sup>66</sup>

## 3. NAMIBIA’S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

### 3.1. Overview of Criminal Offenses

The Combating of Trafficking in Persons Act 1 of 2018, which went into force on November 14, 2019, was enacted to:

give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to criminalise trafficking in persons and related offences; to protect and assist victims of trafficking in persons, especially women and children; to provide for the coordinated implementation and administration of this Act; and to provide for incidental matters.<sup>67</sup>

Namibia is comprised of 14 states. The Combating of Trafficking in Persons Act provides that each state of Namibia “shall adopt such legislative and other measures as may be necessary to establish as criminal offences” in accordance with the Act.<sup>68</sup> At least one of the states, Erongo, passed a resolution on gender-based violence and human trafficking on November 6, 2020.<sup>69</sup> The resolution seeks to: (1) develop a regional strategy and action plan to prevent and punish human trafficking, (2) create a regional registry of

<sup>62</sup> *Id.*, Chapter 3(12)(2).

<sup>63</sup> *Id.*, Chapter 3(12)(4).

<sup>64</sup> U.S. Dep’t of State, Trafficking in Persons Report 408 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

<sup>65</sup> International Co-operation in Criminal Matters Act 9 of 2000, available at: <https://www.lac.org.na/laws/annoSTAT/International%20Co-operation%20in%20Criminal%20Matters%20Act%209%20of%202000.pdf>; see also A Baseline Assessment of Human Trafficking in Namibia, A Nationally Representative Qualitative Assessment, Ministry of Gender Equality and Child Welfare In collaboration with the Ministry of Agriculture, Water & Forestry, 46 (June 2009), available at: [https://pdf.usaid.gov/pdf\\_docs/PA00BJQ.pdf](https://pdf.usaid.gov/pdf_docs/PA00BJQ.pdf).

<sup>66</sup> Protocol on Mutual Legal Assistance in Criminal Matters (2002), available at: [https://pdf.usaid.gov/pdf\\_docs/PA00BJQ.pdf](https://www.sadc.int/documents-publications/show/807#:~:text=In%20pursuance%20of%20the%20goal,laws%20of%20their%20respective%20jurisdictions; see also A Baseline Assessment of Human Trafficking in Namibia, A Nationally Representative Qualitative Assessment, Ministry of Gender Equality and Child Welfare In collaboration with the Ministry of Agriculture, Water & Forestry, 13 (June 2009), available at: <a href=).

<sup>67</sup> Combating of Trafficking in Persons Act 1 of 2018, p. 1, available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>68</sup> *Id.*, Article 5(1).

<sup>69</sup> Ester Mbathera, “Erongo passes GBV and human trafficking resolution,” TheNamibian.com, (Nov. 7, 2020), available at: <https://www.namibian.com.na/206111/archive-read/Erongo-passes-GBV-and-human-trafficking-resolution>.



human trafficking perpetrators, (3) oppose bail for anyone arrested for a human trafficking offence, and (4) establish a special court for timely resolution of human trafficking offences.<sup>70</sup>

Namibia is also a party to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.<sup>71</sup> This Protocol seeks to make human trafficking a crime, including attempts to traffic or to direct other persons to commit such an offence. The offences carry various penalties, depending on the nature of the offence committed.



## 3.2. Slavery Offenses Under the Criminal Code

### 3.2.1. General

Section 1 of the Combating of Trafficking in Persons Act provides definitions of key terms, including “exploitation,” which encompasses:

- (a) prostitution or any form of sexual exploitation;
- (b) forced labour or forced services, prohibited child labour, or other economic exploitation;
- (c) slavery or practices similar to slavery, including debt bondage or a forced marriage;
- (d) involuntary servitude;
- (e) criminal exploitation;

<sup>70</sup> *Id.*

<sup>71</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000), available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en).

- (f) removal of organs or body parts; or
- (g) the impregnation of a female person against her will for the purpose of selling the child when the child is born.<sup>72</sup>

Section 3 of the Combating of Trafficking in Persons Act defines and prohibits trafficking in persons:

- (1) A person commits an offence of trafficking in persons if he or she intentionally recruits, transports, delivers, transfers, harbours, sells, exchanges, leases, or receives a person by means of -
  - (a) threat;
  - (b) use of force or other forms of coercion;
  - (c) abduction;
  - (d) fraud;
  - (e) deception;
  - (f) kidnapping;
  - (g) abuse of power or abuse of position of vulnerability; or
  - (h) giving or receiving of payments or benefits to obtain the consent of a person who has control over another person,

for the purposes of exploitation.
- (2) The recruitment, transportation, transfer, harbouring, or receiving of a child for the purposes of exploitation is trafficking in persons, even if this does not involve any of the means set out in paragraphs (a), (b), (c), (e), (f), (g), or (h) of subsection (1).
- (3) A person who facilitates or secures the adoption of a child, for the purpose of exploiting that child, commits an offence.
- (4) A person convicted of an offence under subsection (1), (2), or (3) -
  - (a) in the case of a first conviction, is liable to a fine not exceeding [NAD 1,000,000] or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment; and
  - (b) in the case of a second or subsequent conviction, is liable to a fine not exceeding [NAD 2,500,000] or to imprisonment for a period not exceeding 50 years or to both such fine and such imprisonment.<sup>73</sup>

Section 4 of the Combating Trafficking in Persons Act penalizes facilitating trafficking in persons:

- (1) A person commits an offence if he or she -

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<sup>72</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 1, Section 1, available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>73</sup> *Id.*, Chapter 2, Section 3(1)–(4).

- (a) leases, subleases, uses, or allows to be used any room, house, premises, building, or structure for the purpose of facilitating or promoting trafficking in persons;
  - (b) subsequent to the lease or sublease of any room, house, premises, building, or structure, becomes aware or ought reasonably to have known or suspected that it is being used to facilitate or promote trafficking in persons and fails to report that knowledge to a police officer;
  - (c) intentionally advertises, publishes, prints, broadcasts, distributes, or causes the advertisement, publication, printing, broadcasting, or distribution of information that facilitates or promotes trafficking in persons by any means, including the use of electronic communications; or
  - (d) finances, controls, or organises the commission of an offence under this subsection.
- (2) Every electronic communications service provider operating in Namibia who becomes aware or is aware that any electronic communications, stored on or transmitted over its electronic communications system, contains information in contravention of subsection (1)(c), must -
- (a) report the particulars relating to any such communication to a police officer;
  - (b) take such reasonable steps as are necessary to preserve evidence as may be required by the relevant investigative and prosecuting authorities, for purposes of investigation and prosecution by the relevant authorities; and
  - (c) without delay take such reasonable steps as are necessary to prevent continued access to those electronic communications by any -
    - (i) of the customers of that electronic communications service provider; or
    - (ii) person if the electronic communications are stored on the electronic communications system of the electronic communications service provider.
- (3) An electronic communications service provider, who fails to comply with the provisions of paragraphs (a), (b) or (c) of subsection 2, commits an offence.
- (4) A person who is convicted of an offence under subsection (1) or (3) is liable to a fine not exceeding [NAD 1,000,000] or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.<sup>74</sup>

Section 5 of the Combating Trafficking in Persons Act penalizes debt bondage:

A person who intentionally engages in conduct that causes another person to enter into debt bondage commits an offence and is on conviction liable:

- (a) in the case of a first conviction, to a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both; and
- (b) in the case of a second or subsequent conviction, to a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>75</sup>

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<sup>74</sup> *Id.*, Chapter 2, Section 4.

<sup>75</sup> *Id.*, Chapter 2, Section 5.

Section 6 of the Combating Trafficking in Persons Act prohibits possession, destruction, confiscation, concealment, or tampering with identification documents and travel documents to facilitate human trafficking:

- (1) A person commits an offence if he or she possesses, destroys, confiscates, or conceals an identification document or a travel document or tampers with an identification document or a travel document of a person in facilitating or promoting an offence of trafficking in persons.
- (2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding [NAD 1,000,000] or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.<sup>76</sup>

Section 7 of the Combating Trafficking in Persons Act punishes those who make or sell fraudulent identification documents and travel documents:

A person commits an offence if he or she makes, gives, or sells a fraudulent identification document or travel document for the purposes of facilitating or promoting the trafficking in persons and is, on conviction, liable to a fine not exceeding NAD 1,000,000, to imprisonment for a period not exceeding 30 years, or to both.<sup>77</sup>

Section 8 of the Combating Trafficking in Persons Act punishes those who use or benefit from the services of victims of trafficking:

- (1) A person commits an offence if he or she intentionally benefits, financially or otherwise, from the services of a victim of trafficking in persons or uses or allows another person to use the services of a victim of trafficking in persons.
- (2) A person who is convicted of an offence under subsection (1), is liable -
  - (a) in the case of a first conviction, to a fine not exceeding [NAD 1,000,000] or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment; and
  - (b) in the case of a second or subsequent conviction, to a fine not exceeding [NAD 2,500,000] or to imprisonment for a period not exceeding 50 years or to both such fine and such imprisonment.<sup>78</sup>

Section 9 of the Combating Trafficking in Persons Act penalizes transporters or carriers of trafficking victims:

- (1) A carrier commits an offence if he or she knowingly transports or ought reasonably to have known that he or she is transporting a victim of trafficking within Namibia or across the borders of Namibia.
- (2) A carrier who knows or suspects that any of his or her passengers is a victim of trafficking must immediately report that suspicion to a police officer.
- (3) A police officer who receives a report under subsection (2) must act in accordance with section 12(2) and section 12(3) [of the Combating Trafficking in Persons Act].

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<sup>76</sup> *Id.*, Chapter 2, Section 6.

<sup>77</sup> *Id.*, Chapter 2, Section 7.

<sup>78</sup> *Id.*, Chapter 2, Section 8.

- (4) A carrier who fails to comply with subsection (2) commits an offence.
- (5) A person who is convicted of an offence under subsection (1) or (4) is liable to a fine not exceeding [NAD 1,000,000] or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.
- (6) If the court finds on a balance of probabilities that the carrier has knowingly transported a victim of trafficking or ought reasonably to have known that he or she was transporting a victim of trafficking, the carrier is liable to pay the expenses incurred in connection with the -
  - (a) care of the victim of trafficking;
  - (b) accommodation of the victim of trafficking;
  - (c) transportation of the victim of trafficking to his or her country or to the place from where he or she has been trafficked; and
  - (d) repatriation or return of the victim of trafficking to his or her country or to the place from where he or she ... has been trafficked.<sup>79</sup>

Section 10 of the Combating Trafficking in Persons Act punishes those who participate in committing offences under the Act:

A person who -

- (a) attempts to commit or performs any act aimed at participating in the commission of an offence under this Chapter;
- (b) incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages, or procures any other person to commit an offence under this Chapter; or
- (c) conspires with any other person to commit an offence under this Act,

commits an offence and is, on conviction, liable to the same penalties as if he or she has committed that offence.<sup>80</sup>

In addition to the penalties for the criminal offence, the court, on its own or at the victim's request, may order a convicted trafficker to compensate the victim for: (i) damage to or loss of property, including money, suffered by the victim, and (ii) loss of income and support suffered by the victim.<sup>81</sup>

The Child Care and Protection Act further prohibits child trafficking, labour, slavery, servitude, sexual exploitation, debt bondage, unlawful removal or detention, and unlawful taking or sending of a child out of Namibia.<sup>82</sup>

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<sup>79</sup> *Id.*, Chapter 2, Section 9.

<sup>80</sup> *Id.*, Chapter 2, Section 10.

<sup>81</sup> *Id.*, Chapter 5, Section 26.

<sup>82</sup> Child Care and Protection Act 3 of 2015, Chapter 14, Part 1, Section 202; Chapter 15, Part 2, Sections 234–236, available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

HUMAN TRAFFICKING PENALTIES IN NAMIBIA	Maximum term of imprisonment	Maximum fine
Facilitating or adopting a child with intent to exploit the child; intentional conduct to cause debt bondage; intentionally benefiting from a victim of trafficking; and attempting, promoting, or conspiring to commit an offence.	30 years (first conviction)	NAD 1,000,000 (first conviction)
	50 years (second conviction)	NAD 2,500,000 (second conviction)
Facilitating, promoting, financing, or organizing trafficking in a room or building; intentional advertisement to promote trafficking; electronic communications service provider’s failure to report, to preserve evidence, or to prevent continued access; possession, destruction, confiscation, concealment or tampering with identification or travel documents to promote trafficking; making, giving, or selling fraudulent identification or travel documents to promote trafficking; knowingly transporting a victim of trafficking; and carrier’s failure to report suspected trafficking of a passenger.	30 years	NAD 1,000,000

**3.2.2. Extraterritorial application**

Namibia’s High Court has jurisdiction over an act committed outside of Namibia that would be an offence under the Combating of Trafficking in Persons Act if it had occurred in Namibia and “if the person to be charged - (a) is a Namibian citizen; (b) is ordinarily resident in Namibia; (c) ... committed the offence against a citizen of Namibia or a person who is ordinarily resident in Namibia; (d) is ... present in the territory of Namibia or its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform, or aircraft registered or required to be registered in Namibia after the commission of the offence; (e) is ... not extradited by Namibia or if there is no application to extradite that person; or (f) is a juristic person or partnership registered in terms of a law in Namibia.”<sup>83</sup>

The High Court has jurisdiction regardless of whether the act constituted an offence at the place of its commission.<sup>84</sup> The offender also is subject to the penalties set forth in the Combating of Trafficking in Persons Act for the particular offence.<sup>85</sup>

The Prosecutor General must authorize in writing any prosecution under Namibia’s extraterritorial jurisdiction provision and must also designate in writing the appropriate court to handle the prosecution.<sup>86</sup> For court jurisdiction, the offence is deemed to have been committed where the accused is ordinarily resident or the accused’s principal place of business.<sup>87</sup>

<sup>83</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 5, Section 24, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*, Chapter 5, Section 24(2).

<sup>86</sup> *Id.*, Chapter 5, Section 24(3), (5).

<sup>87</sup> *Id.*, Chapter 5, Section 24(4).

### 3.3. Slavery-Like Offenses in Namibia’s Legal Order

#### 3.3.1. *Servitude*

The Combating of Trafficking in Persons Act defines “servitude” as:

a condition in which the labour or services of a person are provided or obtained through threats of 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 the labour or services in question the person or another person would suffer harm.<sup>88</sup>

The Act’s definition of “exploitation” includes involuntary servitude,<sup>89</sup> and, therefore, the Act’s general trafficking offence discussed in Section 3.2.1. encompasses servitude offences.

A conviction involving involuntary servitude, or trafficking more generally, is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment of 30 years, or both.<sup>90</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment of 50 years, or both.<sup>91</sup>

The Child Care and Protection Act 3 of 2015 prohibits a person from using, procuring, or offering a child for servitude.<sup>92</sup> A conviction may result in a maximum fine of NAD 50,000, a maximum imprisonment for 10 years, or both.<sup>93</sup>

#### 3.3.2. *Forced Labor*

In 2017, Namibia ratified the International Labour Organization’s Protocol of 2014 to the Forced Labour Convention, 1930.<sup>94</sup> It requires members to cooperate to ensure the prevention and elimination of all forms of forced or compulsory labour.<sup>95</sup>

Further, Sections 3 and 4 of Namibia’s Labour Act 11 of 2007 prohibits child labour and forced labour.<sup>96</sup> A conviction of child or forced labour can result in a maximum fine of NAD 20,000, a maximum imprisonment for four years, or both.<sup>97</sup>

The Combating of Trafficking in Persons Act defines “forced labour or services” as “labour or services obtained or maintained through threats, the use of force, intimidation, exploitation, or other forms of

<sup>88</sup> *Id.*, Chapter 1, Section 1(2).

<sup>89</sup> *Id.*, Chapter 1, Section 1(1).

<sup>90</sup> *Id.*, Chapter 2, Section 3(4)(a).

<sup>91</sup> *Id.*, Chapter 2, Section 3(4)(b).

<sup>92</sup> Child Care Protection Act 3 of 2015, Chapter 15, Part 2, Section 234(1)(a), available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

<sup>93</sup> *Id.*, Chapter 15, Part 2, Section 234(7).

<sup>94</sup> Namibia joins the global movement to combat forced labour, International Labour Organization, available at: [https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS\\_591477/lang-en/index.htm](https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_591477/lang-en/index.htm).

<sup>95</sup> Protocol of 2014 to the Forced Labour Convention (1930), Article 5, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100\\_ILO\\_CODE:P029:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:P029:NO).

<sup>96</sup> Labour Act 11 of 2007, Chapter 2, Sections 3–4, available at: <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>.

<sup>97</sup> *Id.*, Chapter 2, Section 3(6).

coercion or physical restraint.”<sup>98</sup> The Act’s definition of “exploitation” includes forced labour or forced services, and, therefore, the Act’s general trafficking offence discussed in Section 3.2.1. encompasses forced labour offences.<sup>99</sup> The first conviction of forced labour or services is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both.<sup>100</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>101</sup>

The Child Care and Protection Act 3 of 2015 prohibits a person from using, procuring, or offering a child for forced labour.<sup>102</sup> A conviction may result in a maximum fine of NAD 50,000, a maximum imprisonment for 10 years, or both.<sup>103</sup>

### 3.3.3. *Deceptive recruiting for labor or services*

The Combating of Trafficking in Persons Act defines “Trafficking in persons,” in relevant part, as “the recruitment ... by means of the threat or use of force or other forms of ... deception ... for the purpose of exploitation.”<sup>104</sup>

The first conviction of recruiting by deception, like the other trafficking offences, is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both.<sup>105</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>106</sup>

### 3.3.4. *Early and forced marriage*

Namibia has committed to the elimination of child, early, and forced marriage by 2030.<sup>107</sup> Namibia ratified the Convention on the Rights of the Child, which sets a minimum age of 18 years old for marriage.<sup>108</sup>

The Combating of Trafficking in Persons Act defines “forced marriage” as a “marriage which is without the free and full consent of both spouses or is in contravention of any of the laws on civil and customary marriages in Namibia.”<sup>109</sup> The Combating of Trafficking in Persons Act’s definition of “exploitation” includes

<sup>98</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 1, Section 1(2), available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>99</sup> *Id.*, Chapter 1, Section 1(1).

<sup>100</sup> *Id.*, Chapter 1, Section 3(4)(a).

<sup>101</sup> *Id.*, Chapter 1, Section 3(4)(b).

<sup>102</sup> Child Care Protection Act 3 of 2015, Chapter 15, Part 2, Section 234(1)(a), available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

<sup>103</sup> *Id.*, Chapter 15, Part 2, Section 234(7).

<sup>104</sup> Combating of Trafficking in Persons Act 1 of 2018, Article 3(a), available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>105</sup> *Id.*, Chapter 1, Section 3(4)(a).

<sup>106</sup> *Id.*, Chapter 1, Section 3(4)(b).

<sup>107</sup> Girls Not Brides, Namibia, What international, regional and national commitments has the country made?, available at: <https://atlas.girlsnotbrides.org/map/namibia/#:~:text=Namibia%20co-sponsored%20the%202018%20UN%20General%20Assembly%20resolution,to%20ensure%20free%20and%20full%20consent%20to%20marriage>.

<sup>108</sup> *Id.*

<sup>109</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 1, Section 1(2), available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.



forced marriage, and, therefore, the Act's general trafficking offence discussed in Section 3.2.1. encompasses forced marriage offences.<sup>110</sup>

The first conviction of forced marriage is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both.<sup>111</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>112</sup>

### 3.3.5. *Debt bondage*

The Combating of Trafficking in Persons Act defines "debt bondage" as:

the involuntary status or condition that arises from a pledge by a person of - (a) his or her personal services; (b) the personal services of another person under his or her control, as security for a debt owed or claimed to be owed, including a debt incurred or claimed to be incurred after the pledge is given, by that person if the - (i) debt ... is manifestly excessive; (ii) length or nature of the services [is] not limited and defined; or (iii) value of the services as reasonably assessed is not applied toward the liquidation of the debt or purported debt.<sup>113</sup>

The definition of "exploitation" in the Combating of Trafficking in Persons Act includes debt bondage.<sup>114</sup>

A person who intentionally causes another person to enter into debt bondage commits an offence. The first conviction of debt bondage is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both. A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>115</sup>

The Child Care and Protection Act 3 of 2015 prohibits a person from using, procuring, or offering a child for debt bondage.<sup>116</sup> A conviction may result in a maximum fine of NAD 50,000, a maximum imprisonment for 10 years, or both.<sup>117</sup>

### 3.3.6. *Any other relevant offenses*

Namibia has no other relevant slavery-like offences.

### 3.3.7. *Extraterritorial application of the offenses*

Refer to Section 3.2.2.

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<sup>110</sup> *Id.*, Chapter 1, Section 1(1).

<sup>111</sup> *Id.*, Chapter 1, Section 3(4)(a).

<sup>112</sup> *Id.*, Chapter 1, Section 3(4)(b).

<sup>113</sup> *Id.*, Chapter 1, Section 1(1).

<sup>114</sup> *Id.*, Chapter 1, Section 1(1).

<sup>115</sup> *Id.*, Chapter 1, Section 5.

<sup>116</sup> Child Care Protection Act 3 of 2015, Chapter 15, Part 2, Section 234(1)(a), available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

<sup>117</sup> *Id.*, Chapter 15, Part 2, Section 234(7).

### 3.4. Human Trafficking/Smuggling-Related Criminal Offenses

#### 3.4.1. *International and domestic trafficking/smuggling of people*

The Combating of Trafficking in Persons Act defines the offence of trafficking in persons to include the transportation, delivery, harbouring, selling, exchanging, leasing, or receipt of persons. Refer to Section 3.2.1.

The first conviction of trafficking under the Combating of Trafficking in Persons Act is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both.<sup>118</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>119</sup>

Additionally, a person is liable under the Combating of Trafficking in Persons Act for: (i) attempting to commit or performing any act aimed at participating in the commission of an offence under the trafficking and related offences; (ii) inciting, instigating, commanding, directing, aiding, promoting, advising, recruiting, encouraging, or procuring any other person to commit an offence under the trafficking and related offences; and (iii) conspiring with another person to commit an offence under the Act.<sup>120</sup> These offences for involvement are subject to the same penalties as if the person had actually committed the trafficking or other offence.

#### 3.4.2. *International and domestic trafficking in children*

The Combating of Trafficking in Persons Act applies to all persons, including children. The Act clarifies that the recruitment, transportation, transfer, harbouring, or receiving of a child for the purposes of exploitation is trafficking in persons, even if the action was done without threat, coercion, abduction, fraud, deception, kidnapping, abuse of power, or providing payments or benefits.<sup>121</sup> The first conviction of trafficking is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both.<sup>122</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>123</sup>

The Act also makes it a trafficking offence for a person who facilitates or secures the adoption of a child for the purpose of exploiting that child.<sup>124</sup> This offence is subject to the same penalties for a first conviction and subsequent convictions.

Additionally, a person is liable under the Act for: (i) attempting to commit or performing any act aimed at participating in the commission of an offence under the trafficking and related offences; (ii) inciting, instigating, commanding, directing, aiding, promoting, advising, recruiting, encouraging, or procuring any other person to commit an offence under the trafficking and related offences; and (iii) conspiring with

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<sup>118</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 1, Section 3(4)(a), available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>119</sup> *Id.*, Chapter 1, Section 3(4)(b).

<sup>120</sup> *Id.*, Chapter 2, Section 10.

<sup>121</sup> *Id.*, Chapter 2, Section 3(2).

<sup>122</sup> *Id.*, Chapter 1, Section 3(4)(a).

<sup>123</sup> *Id.*, Chapter 1, Section 3(4)(b).

<sup>124</sup> *Id.*, Chapter 1, Section 3(3).

another person to commit an offence under the Act.<sup>125</sup> These offences for involvement are subject to the same penalties as if the person had actually committed the trafficking or other offences.

The Child Care and Protection Act 3 of 2015 also prohibits child trafficking and punishes such an offence with a maximum fine of NAD 1,000,000, a maximum imprisonment for 20 years, or both.<sup>126</sup> The Child Care and Protection Act further prohibits child labour, slavery, servitude, sexual exploitation, debt bondage, unlawful removal or detention, and unlawful taking or sending of a child out of Namibia.<sup>127</sup> A conviction may result in a maximum fine of NAD 50,000, a maximum imprisonment for 10 years, or both.<sup>128</sup>

### 3.4.3. *Victim harboring*

The Act includes harbouring as an act in the offence of trafficking. Refer to Section 3.2.1.<sup>129</sup>

The first conviction of harbouring, like the other trafficking offences, is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both.<sup>130</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>131</sup>

In addition to harbouring, the Act provides a criminal offence for: (i) the lease, sublease, use, or allowance of any room, house, premises, building, or structure for the purpose of facilitating or promoting trafficking in persons; (ii) the failure to report trafficking to the police after a person becomes aware or reasonably should have known or suspected that the lease or sublease is used to facilitate or promote trafficking; (iii) the intentional advertisement, publication, printing, broadcasting, or distribution of information that promotes trafficking; and (iv) financing, controlling, or organizing the commission of a facilitation offence.<sup>132</sup>

### 3.4.4. *Extraterritorial application of human trafficking and smuggling offenses*

Refer to Section 3.2.2.

### 3.4.5. *International and domestic organ trafficking*

The Act defines “removal of organs or body parts” as the removal or trade in any human organ or other body part in contravention of a law.<sup>133</sup> The Act’s definition of “exploitation” includes removal of organs or body parts, and, therefore, the Act’s general trafficking offence (refer to Section 3.2.1.) encompasses organ trafficking.<sup>134</sup>

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<sup>125</sup> *Id.*, Chapter 2, Section 10.

<sup>126</sup> Child Care Protection Act 3 of 2015, Chapter 14, Part 1, Section 202, available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

<sup>127</sup> *Id.*, Chapter 15, Part 2, Sections 234–236.

<sup>128</sup> *Id.*, Chapter 15, Part 2, Section 234(7).

<sup>129</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 1, Section 3(1)–(2), available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>130</sup> *Id.*, Chapter 1, Section 3(4)(a).

<sup>131</sup> *Id.*, Chapter 1, Section 3(4)(b).

<sup>132</sup> *Id.*, Chapter 1, Section 4.

<sup>133</sup> *Id.*, Chapter 1, Section 1(2).

<sup>134</sup> *Id.*, Chapter 1, Section 1(1).

The first conviction of organ trafficking is punishable by a maximum fine of NAD 1,000,000, a maximum imprisonment for 30 years, or both.<sup>135</sup> A subsequent conviction is punishable by a maximum fine of NAD 2,500,000, a maximum imprisonment for 50 years, or both.<sup>136</sup>

### 3.5. Online Exploitation of Children Offenses

No specific law prohibits online exploitation of children. However, the general offence that prohibits exploitative child labour and trafficking could apply. Refer to Sections 3.4.2., 3.6., and 5.2.

### 3.6. Child Sex Tourism Offenses

Namibia does not have a separate child sex tourism offence. The Combating Trafficking in Persons Act includes sexual exploitation in the definition of “exploitation,” and provides that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons.’”<sup>137</sup>

The Child Care and Protection Act 3 of 2015 prohibits child labour and the exploitation of children, including to “use, procure, offer or employ a child for purposes of commercial sexual exploitation” and to “induce, procure, offer, allow or cause a child to be used for purposes of creating child pornography, whether for reward or not.”<sup>138</sup> A violation of these provisions can result in a maximum fine of NAD 50,000, a maximum imprisonment for 10 years, or both.<sup>139</sup>

## 4. NAMIBIA’S SUPPLY CHAIN REPORTING LEGISLATION

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No supply chain reporting legislation obligates private businesses to control their supply chains to hinder trafficking in persons.<sup>140</sup>

## 5. FORCED LABOR: OVERVIEW OF NAMIBIA’S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

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### 5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

Section 7 of Namibia’s Labour Act 11 of 2007 permits “a person who alleges that any fundamental right or protection under [Chapter 2, prohibiting child labour, forced labour, discrimination, and sexual harassment in employment] has been infringed or is threatened may approach the Labour Court for enforcement of that right or protection or other appropriate relief.”<sup>141</sup>

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<sup>135</sup> *Id.*, Chapter 1, Section 3(4)(a).

<sup>136</sup> *Id.*, Chapter 1, Section 3(4)(b).

<sup>137</sup> *Id.*, Article 3(c).

<sup>138</sup> Child Care Protection Act 3 of 2015, Chapter 15, Part 2, Section 232(1)(c)–(d), available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

<sup>139</sup> *Id.*, Chapter 15, Part 2, Section 234(7).

<sup>140</sup> A.B.A. Rule of Law Initiative, Country Report: Namibia, 17, available at: <https://www.verite.org/wp-content/uploads/2017/11/ABA-ROLI-Country-Report-Namibia-Aug-2017.pdf>.

<sup>141</sup> Labour Act 11 of 2007, Chapter 2, Section 7, available at: <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>.

## 5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

In addition to the Constitution's prohibition on forced labour, Namibia's Labour Act 11 of 2007 (**Labour Act**) prohibits child labour and forced labour.

Section 2 of the Labour Act provides that the Act applies to all employers and employees, except to members of the Namibian Defence Force, Police Force, Central Intelligence Service, or Prison Service, unless legislation specific to those organizations provides otherwise.<sup>142</sup> Section 2(3)–(5) outlines other exceptions to the applicability of the Labour Act.<sup>143</sup>

Section 3 of the Labour Act regulates child labour:

- (1) A person must not employ or require or permit a child to work in any circumstances prohibited in terms of this section.
- (2) A person must not employ a child under the age of 14 years.
- (3) In respect of a child who is at least aged 14, but under the age of 16 years, a person -
  - (a) must not employ that child in any circumstances contemplated in Article 15(2) of the Namibian Constitution;
  - (b) must not employ that child in any circumstances in respect of which the Minister, in terms of subsection (5)(a), has prohibited the employment of such children;
  - (c) must not employ that child in respect of any work between the hours of 20h00 and 07h00; or
  - (d) except to the extent that the Minister, by regulation in terms of subsection (5)(b), permits, must not employ that child, on any premises where -
    - (i) work is done underground or in a mine;
    - (ii) construction or demolition takes place;
    - (iii) goods are manufactured;
    - (iv) electricity is generated, transformed, or distributed;
    - (v) machinery is installed or dismantled; or
    - (vi) any work-related activities take place that may place the child's health, safety, or physical, mental, spiritual, moral, or social development at risk.
- (4) In respect of a child who is at least aged 16 but under the age of 18 years, a person may not employ that child in any of the circumstances set out in subsection (3)(c) or (d), unless the Minister has permitted such employment by regulation in terms of subsection (5)(c).
- (5) The Minister may make regulations to -

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<sup>142</sup> *Id.*, Chapter 1, Section 2.

<sup>143</sup> *Id.*, Chapter 1, Section 2(3)–(5).

- (a) prohibit the employment of children between the ages of 14 and 16 at any place or in respect of any work;
  - (b) permit the employment of children between the ages of 14 and 16 in circumstances contemplated in subsection (3)(d), subject to any conditions or restrictions that may be contained in those regulations;
  - (c) permit the employment of children between the ages of 16 and 18 in circumstances contemplated in subsections (3)(c) or (d), subject to any conditions or restrictions that may be contained in those regulations.
- (6) It is an offence for any person to employ, or require or permit, a child to work in any circumstances prohibited under this section and a person who is convicted of the offence is liable to a fine not exceeding [NAD 20,000], or to imprisonment for a period not exceeding four years, or to both the fine and imprisonment.<sup>144</sup>

Section 4 of the Labour Act, prohibiting forced labour, provides:

- (1) A person must not directly or indirectly cause, permit or require any individual to perform forced labour.
- (2) Forced labour does not include any labour described in Article 9(3)(a) to (e) of the Namibian Constitution<sup>145</sup> and, for the purposes of this Act, “forced labour” includes -
  - (a) any work or service performed or rendered involuntarily by an individual under threat of any penalty, punishment or other harm to be imposed or inflicted on or caused to that individual by any other individual, if the first-mentioned individual does not perform the work or render the service;
  - (b) any work performed by an employee’s child who is under the age of 18 years, if the work is performed in terms of an arrangement or scheme in any undertaking between the employer and the employee;
  - (c) any work performed by any individual because that individual is for any reason subject to the control, supervision or jurisdiction of a traditional leader in that leader’s capacity as traditional leader.
- (3) It is an offence for any person to, directly or indirectly, cause, permit, or require an individual to perform forced labour prohibited under this section and a person who is

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<sup>144</sup> *Id.*, Chapter 2, Section 3.

<sup>145</sup> Excluded labour includes: “(a) any labour required in consequence of a sentence or order of a Court; (b) any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a Court, is reasonably necessary in the interests of hygiene; (c) any labour required of members of the defence force, the police force, the correctional service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service; (d) any labour required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that requiring such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; [and] (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.” The Constitution of the Republic of Namibia, Chapter 3, Article 9, available at: <https://www.kas.de/en/web/namibia/single-title/-/content/the-constitution-of-the-republic-of-namibia>.

convicted of the offence is liable to a fine not exceeding [NAD 20,000], or to imprisonment for a period not exceeding four years or to both the fine and imprisonment.<sup>146</sup>

The Child Care and Protection Act 3 of 2015 also prohibits child labour and trafficking. Section 234 provides that:

- (1) A person may not –
- (a) use, procure or offer a child for slavery or other practices similar to slavery, including debt bondage and servitude or forced or compulsory labour or provision of services;
  - (b) recruit, procure, enlist or employ a child in any national, private or foreign armed or security force or cause such child to be used in any armed conflict;
  - (c) use, procure, offer or employ a child for purposes of commercial sexual exploitation;
  - (d) induce, procure, offer, allow or cause a child to be used for purposes of creating child pornography, whether for reward or not;
  - (e) use, procure, offer or employ a child for purposes of drug production, drug trafficking or the commission of any other crime;
  - (f) use, procure, employ or force a child to beg;
  - (g) force a child to perform labour for that person or any other person, whether for reward or not, that -
    - (i) by its nature or circumstances is likely to harm the health, safety or morals of a child;
    - (ii) is inappropriate for a person of that child's age; or
    - (iii) places the child's well-being, education, physical or mental health, or spiritual, moral or social development at risk;
  - (h) force a child to participate in any performance, display, activity, contest or event, whether for reward or not, unless such performance, display, activity, contest or event forms part of a school curriculum or requirement or unless the participation in question falls within the reasonable exercise of parental authority; or
  - (i) induce or allow a child to participate in any labour, performance, display, activity, contest or event, whether for reward or not, that -
    - (i) by its nature or circumstances is likely to harm the health, safety or morals of a child;
    - (ii) is inappropriate for a person of that child's age; or
    - (iii) places the child's well-being, education, physical or mental health, or spiritual, moral or social development at risk.<sup>147</sup>

<sup>146</sup> *Id.*, Chapter 2, Section 4.

<sup>147</sup> Child Care Protection Act 3 of 2015, Chapter 15, Part 2, Section 234(1), available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

A violation of Section 234 of the Child Care and Protection Act may result in a maximum fine of NAD 50,000, a maximum imprisonment for 10 years, or both.<sup>148</sup> Further, “[a] person who is the owner, lessor, manager, tenant or occupier of any premises on which any exploitative form of child labour has occurred commits an offence if that person, on gaining information of that occurrence, fails to take reasonable steps to report the occurrence to a member of the police promptly and is liable on conviction” to a maximum fine of NAD 20,000, or a maximum imprisonment for five years, or to both.<sup>149</sup>

### 5.3. Statutory Rights

Article 21 of the Namibian Constitution provides that all persons shall have the right to “practise any profession, or carry on any occupation, trade or business.”<sup>150</sup> The Labour Act supplements these rights.

#### 5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

In February 2021, Namibia’s Wage Commission convened to recommend a national minimum wage.<sup>151</sup> While a national minimum wage has not yet been set, the Minister for Labour has the power to issue wage orders to establish the remuneration and working conditions for employees in a particular industry or area after considering the Wage Commission’s recommendations.

The mining, construction, security, and agricultural sectors set basic levels of pay through collective bargaining. For example, in November 2021, the construction industry minimum wage of NAD 17.38/hour is now mandatory for the construction sector pursuant to the collective bargaining agreement between the Construction Industries Federation and the Metal and Allied Namibian Workers Union (**MANWU**).<sup>152</sup>

The Labour Act sets out employees’ rights to certain basic conditions of employment, including:

- Requiring employers to pay employees within a certain time frame of the completed work and via certain payment methods;<sup>153</sup>
- Limiting the amount of hours per week, and sometimes per day, that an employee can work;<sup>154</sup>
- Limiting an employer’s ability to require overtime, and providing that the rate by which overtime is paid must be at least one and one-half times the employee’s hourly basic wage (and double that wage on Sundays and public holidays);<sup>155</sup>

<sup>148</sup> *Id.*, Chapter 15, Part 2, Section 234(7).

<sup>149</sup> *Id.*, Chapter 15, Part 2, Section 234(8).

<sup>150</sup> The Constitution of the Republic of Namibia, Chapter 3, Article 21(1)(j), available at: <https://www.kas.de/en/web/namibia/single-title/-/content/the-constitution-of-the-republic-of-namibia>.

<sup>151</sup> Republic of Namibia, Government Gazette Ministry of Labour, Industrial Relations and Employment Creation, “Notice of Convening Members of Wages Commission and Terms of Reference of Investigation and Invitation for Written Representations on Terms and Conditions of Employment: Labour Act, 2007,” available at: <https://mol.gov.na/documents/53329/0/Wages+Commison+National+Minimum+Wages+%281%29.pdf/db7050bb-dcbd-7785-77b3-43eaca0f40be>.

<sup>152</sup> AllAfrica.com, Namibia: Minimum Wage Increase in Construction Sector Becomes Law, (8 November 2021), available at: <https://allafrica.com/stories/202111080580.html>.

<sup>153</sup> Labour Act 11 of 2007, Chapter 3, Part B, Section 11, available at: <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>.

<sup>154</sup> *Id.*, Chapter 3, Part C, Section 16.

<sup>155</sup> *Id.*, Chapter 3, Part C, Section 17.



- Requiring time for a meal;<sup>156</sup>
- Entitling an employee for an increased basic wage for hours worked between 10 pm and 7 am;<sup>157</sup>
- Restricting the kind of work that can be done on Sundays<sup>158</sup> and public holidays;<sup>159</sup>
- Providing for annual leave,<sup>160</sup> sick leave,<sup>161</sup> compassionate leave,<sup>162</sup> and maternity leave;<sup>163</sup>
- Setting guidelines for providing accommodations for an employee and the employee’s family;<sup>164</sup> and
- Guiding the employment termination process.<sup>165</sup>

### 5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

Employers are prohibited from falsifying records that they are required to keep and maintain under Section 130 of the Labour Act of 2007. Violating this prohibition is subject to a maximum fine of NAD 10,000, a maximum imprisonment of two years, or both.<sup>166</sup>

### 5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

An employer cannot deduct any amount from the employee’s remuneration unless the deduction is allowed by a Court order, any law, a collective bargaining agreement, arbitration award, or written agreement with the employee in limited circumstances.<sup>167</sup>

In addition, an employer cannot fine an employee unless authorized by statute or a collective bargaining agreement. An employer also may not require an employee to buy goods from a shop owned by the employer or run on its behalf, use the services rendered by the employer for reward, or pay for any goods supplied by the employer at a price exceeding an amount equal to the price paid by the employer for the goods, plus any reasonable costs incurred in acquiring the goods. Finally, an employer is prohibited from requiring or permitting any employee to repay remuneration duly paid to the employee or to acknowledge receipt of an amount greater than the remuneration actually received.<sup>168</sup>

The Child Care and Protection Act 3 of 2015 prohibits anyone from “us[ing], procur[ing] or offer[ing] a child for slavery or other practices similar to slavery, including debt bondage and servitude or forced compulsory

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<sup>156</sup> *Id.*, Chapter 3, Part C, Section 18.

<sup>157</sup> *Id.*, Chapter 3, Part C, Section 19.

<sup>158</sup> *Id.*, Chapter 3, Part C, Section 21.

<sup>159</sup> *Id.*, Chapter 3, Part C, Section 22.

<sup>160</sup> *Id.*, Chapter 3, Part D, Section 23.

<sup>161</sup> *Id.*, Chapter 3, Part D, Section 24.

<sup>162</sup> *Id.*, Chapter 3, Part D, Section 25.

<sup>163</sup> *Id.*, Chapter 3, Part D, Section 26.

<sup>164</sup> *Id.*, Chapter 3, Part E, Section 28.

<sup>165</sup> *Id.*, Chapter 3, Part F, Sections 29–37.

<sup>166</sup> *Id.*, Chapter 10, Section 130.

<sup>167</sup> *Id.*, Chapter 3, Part B, Section 12.

<sup>168</sup> *Id.*

labour or provision of services.”<sup>169</sup> A violation of this provision can result in a maximum fine of NAD 50,000, a maximum imprisonment for 10 years, or both.<sup>170</sup>

#### 5.3.4. Remedies

“If there is a dispute about non-compliance with, contravention, application, or interpretation of” worker’s rights to the basic conditions listed in Section 5.3.1., Section 38 of the Labour Act provides that “any party to the dispute may refer the dispute in writing to the Labour Commissioner,” who must then “refer the dispute to an arbitrator to resolve the dispute through arbitration” in accordance with the Labour Act guidelines.<sup>171</sup>

Depending on the claim at issue, an arbitrator may make any appropriate award, including:

- (a) an interdict;<sup>172</sup>
- (b) an order directing the performance of any act that will remedy a wrong;
- (c) a declaratory order;
- (d) an order of reinstatement of an employee;
- (e) an award of compensation; and
- (f) an order for costs.<sup>173</sup>

Moreover, where the labour inspector has reasonable grounds to believe that an employer has not complied with the provisions of the Labour Act then the inspector may issue a compliance order. Any person who obstructs a labour inspector in the performance of the inspector’s functions, intentionally does not provide an answer to the labour inspector’s question, intentionally provides false and misleading information to the labour inspector, fails to comply with the compliance order, or falsely claims to be a labour inspector is liable to a maximum fine of NAD 10,000, a maximum imprisonment for two years, or both.<sup>174</sup>

#### 5.3.5. The well-being of workers: Promotion of worker’s health

The Labour Act requires employers to provide for the safety, health, and welfare of employees at work. Under Section 39 of the Labour Act:

[e]very employer or person in charge of premises where employees are employed must, without charge -

- (a) provide a working environment that -

<sup>169</sup> Child Care and Protection Act 3 of 2015, Chapter 15, Part 2, Section 234(1)(a), available at: <https://www.lac.org.na/laws/annoSTAT/Child%20Care%20and%20Protection%20Act%203%20of%202015.pdf>.

<sup>170</sup> *Id.*, Chapter 15, Part 2, Section 234(7).

<sup>171</sup> Labour Act 11 of 2007, Chapter 3, Part G, Section 38, available at: <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>.

<sup>172</sup> An interdict is defined as “[a]n injunction or other prohibitory, exhibitory, or restitutory decree.” Interdict, Black’s Law Dictionary (8th ed.), p. 827.

<sup>173</sup> *Id.*, Chapter 8, Part C, Section 86(15).

<sup>174</sup> *Id.*, Chapter 9, Part F, Sections 123–127.

- (i) is safe;
- (ii) is without risk to the health of employees; and
- (iii) has adequate facilities and arrangements for the welfare of employees;
- (b) provide and maintain plant, machinery and systems of work, and work processes, that are safe and without risk to the health of employees;
- (c) provide and maintain safe entry and exit from places of work;
- (d) provide employees with adequate personal protective clothing and equipment if reasonably necessary;
- (e) provide employees with the necessary information and training to work safely and without a risk to their health;
- (f) ensure that the use, handling, storage or transport of articles or substances is safe and without risk to the health of employees;
- (g) ensure that employees are given the necessary instructions and supervision to work safely and without a risk to their health;
- (h) ensure that the organisation of work, including hours of work and mealtimes, do not adversely affect the safety or health of employees; and
- (i) take any other prescribed steps to ensure the safety, health and welfare of employees at work.<sup>175</sup>

Employees have the right to leave a dangerous place of work,<sup>176</sup> and have the duty to take reasonable care to ensure their own safety and health and the safety and health of other individuals who may be affected by their employment activities.<sup>177</sup>

The Labour Act also provides for health and safety representatives and committees at workplaces. They are responsible for collecting relevant information, investigations, inspections, and other functions.<sup>178</sup>

### 5.3.6. *The well-being of workers: Rest time*

Section 16 OF the Labour Act provides:

- (1) Subject to any provision of this Chapter to the contrary, an employer must not require or permit an employee, other than an employee contemplated in subsection (3), to work more than -
  - (a) 45 hours in any week, and in any case, not more than -
    - (i) nine hours on any day, if the employee works for five days or fewer in a week;
    - or

<sup>175</sup> *Id.*, Chapter 3, Part G, Section 39.

<sup>176</sup> *Id.*, Chapter 4, Part A, Section 42.

<sup>177</sup> *Id.*, Chapter 4, Part B, Section 43.

<sup>178</sup> *Id.*, Chapter 4, Part B, Section 43–47.

- (ii) eight hours on any day, if the employee works for more than five days in a week; or
  - (b) if the employee works in a continuous operation, the maximum number of hours prescribed by the Minister in terms of section 15(2) [of the Labour Act] for that employee’s continuous shift.
- (2) The ordinary hours of work of an employee described in subsection (1) whose duties include serving members of the public may be extended up to 15 minutes in a day, but not more than a total of 60 minutes in a week, to enable that employee to continue performing those duties after the completion of ordinary hours of work.
- (3) Subject to any provision of this Chapter to the contrary, an employer must not require or permit a security officer, an employee working in emergency healthcare services or an employee of a class designated by the Minister in terms of subsection (5) to work more than -
- (a) 60 hours in any week, and in any case, not more than -
    - (i) 12 hours on any day, if the employee works for five days or fewer in a week; or
    - (ii) 10 hours on any day, if the employee works for more than five days a week; or
  - (b) if the employee works in a continuous operation, the maximum number of hours prescribed by the Minister in terms of section 15(2) [of the Labour Act] for that employee’s continuous shift.<sup>179</sup>

Section 17 of the Labour Act provides that employers must not require or permit an employee to work overtime unless there is an agreement in place, and the agreement cannot require more than three hours of overtime in a day or more than 10 hours of overtime in a week.<sup>180</sup> Further, employees must be paid for overtime at a rate of at least 1.5 times an hour’s wage—excluding Sundays and holidays when the employee must be paid at least double the employee’s wage.<sup>181</sup>

The Labour Act also requires time for a meal, and restricts the hours that can be worked at night, on Sundays, and on public holidays.<sup>182</sup>

The Labour Act entitles employees to at least four consecutive weeks of annual leave with full remuneration,<sup>183</sup> sick leave,<sup>184</sup> five days of compassionate leave (for death and serious illness in the family),<sup>185</sup> and maternity leave (including extended maternity leave).<sup>186</sup>

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<sup>179</sup> *Id.*, Chapter 3, Part C, Section 16.

<sup>180</sup> *Id.*, Chapter 3, Part C, Section 17(1).

<sup>181</sup> *Id.*, Chapter 3, Part C, Section 17(2).

<sup>182</sup> *Id.*, Chapter 3, Part C, Sections 18–22.

<sup>183</sup> *Id.*, Chapter 3, Part D, Section 23.

<sup>184</sup> *Id.*, Chapter 3, Part D, Section 24.

<sup>185</sup> *Id.*, Chapter 3, Part D, Section 25.

<sup>186</sup> *Id.*, Chapter 3, Part D, Sections 26–27.

### 5.3.7. *The well-being of workers: Freedom to change jobs and right to leave*

Namibia's Constitution gives individuals the right to withhold their labour without the risk of criminal penalties, and to practice any profession, or carry on any occupation, trade, or business.<sup>187</sup>

Employers and employees have the right to terminate an employment contract by serving reasonable notice. The notice period should be at least one day if the employee has been employed four weeks or less, at least one week if the employee has been employed more than four weeks but not more than a year, and at least one month if the employee has been employed more than a year.<sup>188</sup>

Section 42 of the Labour Act allows an employee to leave a workplace if the employee has reasonable cause to believe that the workplace is not safe or healthy. When the employee leaves the place of work on this basis, the employee must immediately inform the employer of the basis for believing the workplace is not safe or healthy, and the employee is entitled to the same conditions of service and remuneration during the period of absence.<sup>189</sup>

## 5.4. Rights to a Safe Workplace and Compensation Associated With Injuries or Illness

The Labour Act requires employers to provide for the safety, health, and welfare of employees at work. Disputes about these guidelines can be brought to the Labour Commissioner, who may refer the dispute to an arbitrator to resolve. Refer to Sections 5.3.4. and 5.3.5.

In addition to the Labour Act, employees must abide by Regulation 156, "Regulations Relating to the Health and Safety of Employees at Work."<sup>190</sup> Regulation 156 provides that any person who contravenes certain workplace guidelines is guilty of an offence and liable for a maximum fine of NAD 2,000, a maximum imprisonment for six months, or both.<sup>191</sup>

## 5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Although the Government of Namibia fully meets the standards to eliminate trafficking and has demonstrated serious and sustained efforts during the pandemic thus far, the Government "identified fewer victims and did not initiate any new prosecutions of alleged traffickers" in 2020.<sup>192</sup> The U.S. State Department's 2021 report on trafficking in Namibia found that "occasional breakdowns in communication between government officials and civil society and within government ministries led to a lack of coordination among members of the National Coordinating Body (NCB)."<sup>193</sup> Further, no specialized anti-trafficking training was provided to law enforcement or judicial officials during the reporting period, and

<sup>187</sup> The Constitution of the Republic of Namibia, Chapter 3, Article 21(1), available at: <https://www.kas.de/en/web/namibia/single-title/-/content/the-constitution-of-the-republic-of-namibia>.

<sup>188</sup> Labour Act 11 of 2007, Chapter 3, Part F, Section 30, available at: <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>.

<sup>189</sup> *Id.*, Chapter 4, Part A, Section 42.

<sup>190</sup> Government Gazette of the Republic of Namibia, No. 156 Labour Act, 1992: Regulations relating to the health and safety of employees at work (1997), available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/66341/62436/F-707171669/NAM66341.pdf>.

<sup>191</sup> *Id.*, Chapter 1, Section 13.

<sup>192</sup> U.S. Dep't of State, Trafficking in Persons Report 406 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

<sup>193</sup> *Id.* at 406–07.

the government did not report using either bilateral law enforcement cooperation agreements with Zimbabwe and Angola during the reporting period.<sup>194</sup>

Nonetheless, the U.S. State Department’s 2021 Trafficking in Persons Report found that Namibia maintained trafficking law enforcement efforts, initiating 10 case investigations, continuing 16 case investigations, and continuing prosecution of 18 defendants in 2020, and found that the penalties associated with the Combating of Trafficking in Persons Act 1 of 2018 were “sufficiently stringent and, with respect to sex trafficking, commensurate with punishments prescribed for other series crimes, such as kidnapping.”<sup>195</sup>

[T]he government and NGOs jointly provided shelter, psycho-social services, medical care, and provision of other basic needs to victims of trafficking, gender-based violence, and child abuse. ... The government allocated [NAD 6,000,000] ([USD] 408,910) to NGOs and shelters supporting trafficking victims in 2020, a significant increase from allocating [NAD 325,000] ([USD] 22,150) during the previous reporting period.<sup>196</sup>

Seventeen Gender-based Violence Protection Units nationwide offered initial psycho-social, legal, and medical support to victims of crime, in coordination with the police, the Ministry of Gender Equality, Poverty Eradication, and Child Welfare (MGEPECW), the Ministry of Health and Social Services, and NGOs. Adult victims were able to seek employment and work while receiving assistance ....<sup>197</sup>

Authorities did not condition access to victim services on cooperation with law enforcement; the government provided legal aid, transportation, and witness protection to victims who chose to cooperate with law enforcement proceedings. The government allowed victims to testify in rooms separate from the courtroom when such rooms were available. All 19 victims identified voluntarily assisted law enforcement during the reporting period. Foreign victims could obtain temporary residence visas during legal proceedings. The law allowed victims to obtain restitution and file civil suits against their traffickers; however, no victims to date had received restitution or compensation. Authorities screened vulnerable populations, including irregular migrants and individuals in commercial sex, for trafficking indicators. There were no reports the government detained or otherwise penalized trafficking victims for unlawful acts traffickers compelled them to commit.<sup>198</sup>

In 2020, in part due to COVID-19 pandemic restrictions, the Government initiated limited public awareness activities regarding trafficking issues.<sup>199</sup>

## 5.6. Interaction Between Employment Law and Migration

### 5.6.1. *Employment rights affected where employment is unlawful under migration law*

Section 34 of Namibia’s Immigration Control Act of 1993 provides:

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<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 407.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 408.

- (1) Any person who at any time entered Namibia and, irrespective of the circumstances of his or her entry, is not or is not deemed to be in possession of a permanent residence permit issued to him or her under section 26 [of the Immigration Control Act of 1993] or an employment permit issued to him or her under section 27 [of the Immigration Control Act of 1993] or a student's permit issued to him or her under section 28 [of the Immigration Control Act of 1993] or a visitor's entry permit issued to him or her under section 29 [of the Immigration Control Act of 1993], or has not under section 35 [of the Immigration Control Act of 1993] been exempted from the provisions of section 24 [of the Immigration Control Act of 1993], as the case may be, shall present himself or herself to an immigration officer or to an officer of the Ministry.
- (2) Any person who has under section 35 [of the Immigration Control Act of 1993] been exempted from the provisions of section 24(b) [of the Immigration Control Act of 1993] for a specified period, shall before the date on which such period expires present himself or herself to an immigration officer or to an officer of the Ministry.
- (3) Any person referred to in subsection (1) who fails to comply with the provisions of that subsection or any person referred to in subsection (2) who fails to comply with the provisions of the last mentioned subsection or any person, so referred to, who fails, on being called upon to do so by an immigration officer, then and there to furnish to such immigration officer the particulars determined by the Chief of Immigration to enable the board, the Chief of Immigration or such immigration officer, as the case may be, to consider the issuing to the said person of a permit concerned, shall be guilty of an offence and on conviction be liable to a fine not exceeding [NAD 4,000] or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.<sup>200</sup>

### 5.6.2. Rights/remedies available under applicable migration law and regulations

The Labour Act applies to all employers and employees, excluding specialized employees of certain government agencies.<sup>201</sup> Section 128A sets forth a presumption regarding who is an employee, stating:

[f]or the Purposes of this Act or any other employment law, until the contrary is proved, an individual who works for or renders services to any other person, is presumed to be an employee of that other person, regardless of the form of the contract or the designation of the individual, if any one or more of the following factors is present: (a) the manner in which the individual works is subject to the control or direction of that other person; (b) the individual's hours of work are subject to the control or direction of that other person; (c) in the case of an individual who works for an organisation, the individual's work forms an integral part of the organisation; (d) the individual has worked for that other person for an average of at least 20 hours per month over the past three months; (e) the individual is economically dependent on that person for whom he or she works or renders services; (f) the individual is provided with tools of trade or work equipment by that other person; (g) the individual only works for or renders services to that other person; or (h) any other prescribed factor.<sup>202</sup>

<sup>200</sup> Immigration Control Act (1993), Part V, Section 34, available at: <https://www.refworld.org/docid/3ae6b4fb0.html>.

<sup>201</sup> Labour Act 11 of 2007, Chapter 1, Section 2, available at: <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>.

<sup>202</sup> *Id.*, Chapter 10, Section 128A.

Namibia’s Combating of Trafficking in Persons Act permits victims to temporarily reside in Namibia.<sup>203</sup> Further, the Act prohibits criminal prosecution against victims of trafficking for entering Namibia in violation of immigration regulations or for their illegal activity (including falsifications of identity or travel documents) directly resulting from their status as trafficking victims.<sup>204</sup>

For more detailed information regarding the rights and remedies of trafficking victims who are not citizens of Namibia, refer to Sections 7.1.4. and 7.1.5.

## 5.7. Employment Laws and Child Labor

Refer to Section 5.2.

## 6. GOVERNMENT PROCUREMENT RULES

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In 2015, Namibia enacted the Public Procurement Act, 2015, which went into effect on April 1, 2017. It replaced the Tender Board of Namibia Act 16 of 1996. The Public Procurement Act is the only act that regulates tender processes in Namibia where the government is a contracting party.

The Public Procurement Act’s objectives are to: (1) “promote integrity, accountability, transparency, competitive supply, effectiveness, efficiency, fair-dealing, responsiveness, informed decision-making, consistency, legality and integration in the procurement of assets, works and services”; (2) “promote, facilitate and strengthen measures to implement the empowerment and industrialisation policies of the Government”; and (3) “regulate the letting and hiring of anything or the acquisition or granting of any right and the disposal of assets.”<sup>205</sup>

The Public Procurement Act applies to “all procurement of goods, works and services and disposal of assets undertaken by the Board or a public entity”; “the letting and hiring of anything or the acquisition or granting of any right; and” “contract management of goods, works and services procured or disposed of by the Board or a public entity,”<sup>206</sup> subject to certain exemptions specified by the Minister.<sup>207</sup> No provision of the Public Procurement Act requires monitoring for trafficking or forced labour.

## 7. RESTITUTION AND VICTIM COMPENSATION

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### 7.1. Overview

Chapter 3 of the Combating of Trafficking in Persons Act sets forth guidelines for the protection of and assistance to victims of trafficking, including the protection of foreign victims.<sup>208</sup>

<sup>203</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 3, Section 15, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>204</sup> *Id.*, Chapter 3, Section 16.

<sup>205</sup> Public Procurement Act, 2015, Part 1, Section 2, available at: <https://www.cran.na/yglilidy/2019/12/Public-Procurement-Act.pdf>.

<sup>206</sup> *Id.*, Part 1, Section 3.

<sup>207</sup> *Id.*, Part 1, Section 4.

<sup>208</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 3, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.



In 2018, the Ministry of Gender Equality and Child Welfare, in coordination with the UN Migration Agency and the National Coordinating Body, launched the National Referral Mechanism and Standard Operating Procedures for identifying and assisting victims of trafficking.<sup>209</sup>

### 7.1.1. Victim Identification, Reporting, and Referral

Namibia requires people with information, or reasonable suspicion, about the trafficking of a person to make a report to a police officer or a state employed social worker.<sup>210</sup> Only state employed social workers are permitted to assess and determine that a person is a victim of trafficking in persons.<sup>211</sup>

If a police officer receives a report of suspected trafficking, the police officer must:

- make a report to a state employed social worker;
- provide assistance to the victim if the victim requires assistance; and
- take the person to a place of safety or to an organization for support.<sup>212</sup>

The state employed social worker who receives a report of suspected trafficking must assess whether the person is a victim of trafficking and, if so, issue a document to the person indicating that the person is a trafficking victim. The social worker must refer any child victim to a designated social worker for an investigation pursuant to Section 139 of the Child Care and Protection Act to assess whether the child needs protective services.<sup>213</sup>

### 7.1.2. Assistance for Victims of Trafficking

According to the Combating of Trafficking in Persons Act, the Minister may designate a person or organization to provide assistance to trafficking victims, including: housing; counseling; information regarding legal rights in the victim's native language; medical and psychological assistance; and safety.<sup>214</sup>

These services may be provided to a person who is reasonably suspected to be a trafficking victim, and must be provided to a trafficking victim regardless of nationality.<sup>215</sup>

<sup>209</sup> Republic of Namibia, National Referral Mechanism and Standard Operating Procedures for the Identification, Protection, Referral and Safe Return of Victims of Trafficking in Namibia, 2018, available at: [https://www.iom.int/news/namibia-ready-combat-trafficking-persons](https://mgepesw.gov.na/documents/792320/918990/NATIONAL+REFERRAL+MECHANISM+AND+STANDARD+OPERATING+PROCEDURES+FOR+THE+IDENTIFICATION%2C+PROTECTION%2C+REFERRAL+AND+SAFE+RETURN+OF+VICTIMS+OF+TRAFFICKING+IN+NAMIBIA.pdf/56cca9d4-75ad-0cd6-4638-89172b2fb39c?version=1.0&download=true#:~:text=The%20Government%20of%20the%20Republic,victims%20of%20trafficking%20in%20Namibia; see also IOM UN Migration, Namibia Ready to Combat Trafficking in Persons, (Apr. 1, 2019), available at: <a href=).

<sup>210</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 3, Section 12, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>211</sup> *Id.*, Chapter 3, Section 12(6).

<sup>212</sup> *Id.*, Chapter 3, Section 12(2)–(3).

<sup>213</sup> *Id.*, Chapter 3, Section 12(5).

<sup>214</sup> *Id.*, Chapter 3, Section 13.

<sup>215</sup> *Id.*, Chapter 3, Section 13(a)–(b).

### 7.1.3. *Treatment of Foreign Victims*

A foreign victim of trafficking in Namibia, if placed in the care of a safe organization or person pursuant to Section 13 of the Act, is entitled to a visitor's entry permit allowing the victim to remain in Namibia for at least 90 days, despite the Immigration Control Act and regardless of the victim's immigration status. The 90-day period may be extended, subject to certain conditions.<sup>216</sup>

Further, irrespective of the Immigration Control Act, the Minister responsible for immigration may issue a temporary residence permit to foreign victims under certain circumstances, including victims who are able to assist law enforcement with trafficking in persons cases.<sup>217</sup>

The 2021 U.S. State Department Trafficking in Persons Report on Namibia found that “[f]oreign victims had access to the same shelter and services as domestic victims.”<sup>218</sup>

### 7.1.4. *Prohibition of criminal prosecution against victims of trafficking.*

The Combating of Trafficking in Persons Act, Section 16, states that:

Criminal prosecution may not be instituted against a victim of trafficking, for -

- (a) entering or remaining in Namibia in contravention of the Immigration Control Act;
- (b) possessing any fabricated or falsified identity document, travel document, or other document used for the facilitation of movement across borders; and
- (c) being involved in an illegal activity to the extent that he or she has been compelled to do so, as a direct result of his or her situation as a victim of trafficking.<sup>219</sup>

### 7.1.5. *Repatriation*

The Minister for Immigration and Home Affairs may not repatriate a foreign victim back to the victim's country of origin without considering the best interests of the child, the victim's safety, availability of care arrangements, and the possibility that the victim may be harmed or trafficked again.<sup>220</sup>

The Minister responsible for international relations must facilitate the return of Namibian citizens or permanent residents who were trafficked out of Namibia.<sup>221</sup>

### 7.1.6. *Assistance to Children who are Trafficking Victims*

The Combating of Trafficking in Persons Act sets forth detailed guidelines for the treatment of children who are trafficking victims. The Minister must authorize an adult to escort the child victim to a safe place.<sup>222</sup>

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<sup>216</sup> *Id.*, Chapter 3, Section 14.

<sup>217</sup> *Id.*, Chapter 3, Section 15.

<sup>218</sup> U.S. Dep't of State, Trafficking in Persons Report 407 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

<sup>219</sup> Combating of Trafficking in Persons Act 1 of 2018, Chapter 3, Section 16, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108604/134330/F-2049896196/NAM108604.pdf>.

<sup>220</sup> *Id.*, Chapter 3, Section 17.

<sup>221</sup> *Id.*, Chapter 3, Section 18.

<sup>222</sup> *Id.*, Chapter 3, Section 19.

The Act permits a foreign victim of trafficking, who is a child, to the same services as any other child in Namibia, including health care and education services.<sup>223</sup>

If an investigation conducted under section 139 of the Child Care and Protection Act finds that a child is a foreign victim and is illegally present in Namibia, the court may order that the child be assisted in applying for asylum under the Namibia Refugees (Recognition and Control) Act.<sup>224</sup>

Further, a finding that protective services are warranted for a child who is a foreign victim and illegally present in Namibia serves as an authorization that the child can remain in Namibia for the duration of the child's court order.<sup>225</sup>

If a court believes the parent or guardian of a child trafficked the child or allowed the child to be trafficked, the court may suspend parental responsibilities of the person pursuant to Section 237 of the Child Care and Protection Act, and place that child in temporary safe care subject to certain conditions.<sup>226</sup>

## 8. NAMIBIA'S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

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Namibia takes a multidisciplinary approach to combating trafficking, with many stakeholders involved in the process.

In 2018, the Ministry of Gender Equality and Child Welfare, with assistance from the International Organization for Migration and the National Coordinating Body (**NCB**), developed the National Referral Mechanism (**NRM**) and Standard Operating Procedures (**SOPs**) for the Identification, Protection, Referral and Safe Return of Victims of Trafficking in Namibia.<sup>227</sup>

The NCB, which helped to develop the NRM and SOPs, has representatives from multiple Namibian agencies and organizations, including: Ministry of Agriculture, Water & Forestry; Ministry of Health and Social Services; Ministry of Gender Equality and Child Welfare; Ministry of Home Affairs and Immigration; Ministry of International Relations & Cooperation; Ministry of Labour, Industrial Relations & Employment Creation; Ministry of Sport, Youth & National Services; Ministry of Works and Transport; Office of the Inspector General, Nampol; Officer of the Prosecutor General; Council of Churches of Namibia; Friendly Haven; Lifeline/Childline; University of Namibia; United Nations Children's Fund; and United Nations Office on Drugs and Crime.<sup>228</sup>

<sup>223</sup> *Id.*, Chapter 3, Section 20.

<sup>224</sup> *Id.*, Chapter 3, Section 21.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*, Chapter 3, Section 22.

<sup>227</sup> Republic of Namibia, National Referral Mechanism and Standard Operating Procedures for the Identification, Protection, Referral and Safe Return of Victims of Trafficking in Namibia (2018), available at: <https://mgepesw.gov.na/documents/792320/918990/NATIONAL+REFERRAL+MECHANISM+AND+STANDARD+OPERATING+PROCEDURES+FOR+THE+IDENTIFICATION%2C+PROTECTION%2CREFERRAL+AND+SAFE+RETURN+OF+VICTIMS+OF+TRAFFICKING+IN+NAMIBIA.pdf/56cca9d4-75ad-0cd6-4638-89172b2fb39c?version=1.0&download=true#:~:text=The%20Government%20of%20the%20Republic,victims%20of%20trafficking%20in%20Namibia>.

<sup>228</sup> *Id.*

A National Committee, chaired by the Minister of International Relations and Cooperation, was established in Namibia to fight trafficking in persons.<sup>229</sup> “The Committee works with relevant stakeholders on matters pertaining to [trafficking in persons] in the country.”<sup>230</sup> Further, the Ministry of Gender Equality and Child Welfare acts as the National Coordinator for the NRM and SOPs, and is responsible for coordinating the national anti-trafficking programs and strategies.<sup>231</sup>

As discussed in Section 7, many stakeholders are involved with identifying and protecting victims of trafficking. Police officers and state employed social workers must report suspected cases of trafficking, and social workers are responsible for assessing the status of the victims.

Further, according to the U.S. State Department’s 2021 Trafficking in Persons Report:

- “[w]ith support from an international organization, the [Namibian] government contributed information to a centralized anti-trafficking database that collected national data on cases and victims identified and shared it with countries in the region.”<sup>232</sup>
- “The Ministry of Labour, Industrial Relations, and Employment Creation oversaw recruitment agency licensing and managed a database registering job seekers, coordinating overseas job placements, and monitoring employees’ arrival in their intended destinations;”<sup>233</sup>
- “The government, in partnership with an international organization, trained 30 social workers from all 14 regions of the country on the SOPs and NRM during the reporting period.”<sup>234</sup>
- “The government maintained bilateral law enforcement cooperation agreements with Zimbabwe and Angola.”<sup>235</sup>
- “An NGO expanded a program aiming to increase victim identification at airports to include land border crossings, in cooperation with the government.”<sup>236</sup>

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<sup>229</sup> *Id.*, p. 12.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*, p. 13.

<sup>232</sup> U.S. Dep’t of State, Trafficking in Persons Report 408 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.* at 407.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

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