

TRAFFICKING IN PERSONS

**A Guide to Namibia's Combating of
Trafficking in Persons Act 1 of 2018**



**LEGAL ASSISTANCE CENTRE
2018**



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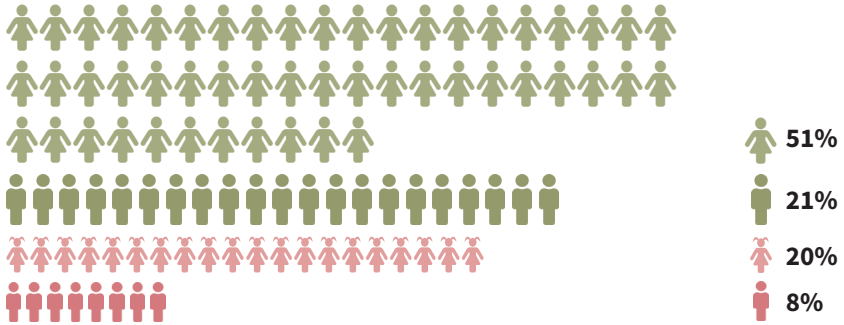
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Trafficking victims can be women, men, girls and boys

International data on trafficking, 2014



Sex of persons convicted of trafficking

International data on trafficking, 2014



Source: Based on *Global Report on Trafficking in Persons 2016*, United Nations Office on Drugs and Crime (UNODC), 2016 at page 7 (www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf).

The UNODC releases a global report on trafficking every two years. Look for these reports and other international resources on trafficking on the UNODC human trafficking website:

www.unodc.org/unodc/en/human-trafficking/index.html.



1. Introduction

A decade ago, people tended to think of trafficking in persons – also referred to as human trafficking or modern slavery – as primarily involving women trafficked from a poor country into an affluent country for sexual exploitation. Today, there is a greater awareness about the diversity of trafficking (which affects women, men and children) and the various ways in which victims may be exploited (such as for work, sex or forced marriage). Also, there are increasing reports of domestic trafficking – reminding us that trafficking may take place within a single country, including the victim’s own, and does not require the crossing of an international border.

1.1 Trafficking in Namibia

The first human trafficking case in Namibia was reported in 2010. Between 2010 and late 2018, the Namibian police recorded 39 cases of trafficking. By November 2018, there had been two convictions for the crime of trafficking:

In June 2015, Johanna Lukas was convicted in the High Court of five charges of trafficking in persons under the Prevention of Organized Crime Act as well as several charges of violating the Combating of Rape Act. The Court found that she was recruited by a man to provide underage girls for the purpose of sexual exploitation. She was sentenced to a total of 13 years imprisonment for the crimes of rape and trafficking together. This case involved a total of three victims, all below the age of 16.¹

In September 2018, Bertus Koch was convicted in the High Court of five charges of child trafficking as well as five charges of violating the Combating of Immoral Practices Act, for harbouring children in his home with the intention of committing a sexual or immoral act. He was sentenced to a total of 8 years imprisonment for the crimes taken together. This case involved a total of five minor girls, between 9 and 13 years old.²

1 *S v Lukas* (CC 15/2013) [2015] NAHCMD 124 (2 June 2015) [judgment]; *S v Lukas* (CC 15-2013) [2015] NAHCMD 186 (10 August 2015) [sentence].

2 *S v Koch* (CC 20/2017) NAHCMD 290 (18 September 2018) [judgment]; *S v Koch* (CC 20-2017) [2018] NAHCMD 318 (11 October 2018) [sentence].

As with gender-based violence and child abuse, the reported cases probably understate the true picture. Namibia's Inspector-General of Police was quoted in the press in October 2017 as stating that human trafficking is a concealed crime in Namibia which is difficult to address. He stated that "it cannot be denied that it does exist in the country" although "it is not as rampant as many people think it is".³ It is clear that Namibia needs to be vigilant about trafficking, and to raise awareness amongst the public and amongst law enforcement officers, prosecutors and judges.



The Walk for Freedom in Windhoek on 27 October 2017

(Photo from "Namibia's 'concealed' human trafficking crisis", *The Patriot*, 27 October 2017)

"Walk For Freedom is a global fundraising and awareness event. Rallying thousands of abolitionists, taking millions of steps, showing up in hundreds of cities all over the world. [...] We believe that when we all show up locally, we will have an impact globally. In our cities, in our communities, in our world. One step at a time, we fundraise and walk to see a world without slavery."

- Walk for Freedom website: www.a21.org/content/walk-for-freedom-2018-home/gp2dhc

3 "Namibia's 'concealed' human trafficking crisis", *The Patriot*, 27 October 2017.

2. Overview of Namibian law on trafficking in persons

2.1 International law applicable to Namibia

Namibia is obligated by several international agreements to which it is a party to take action against trafficking – especially against trafficking of children.

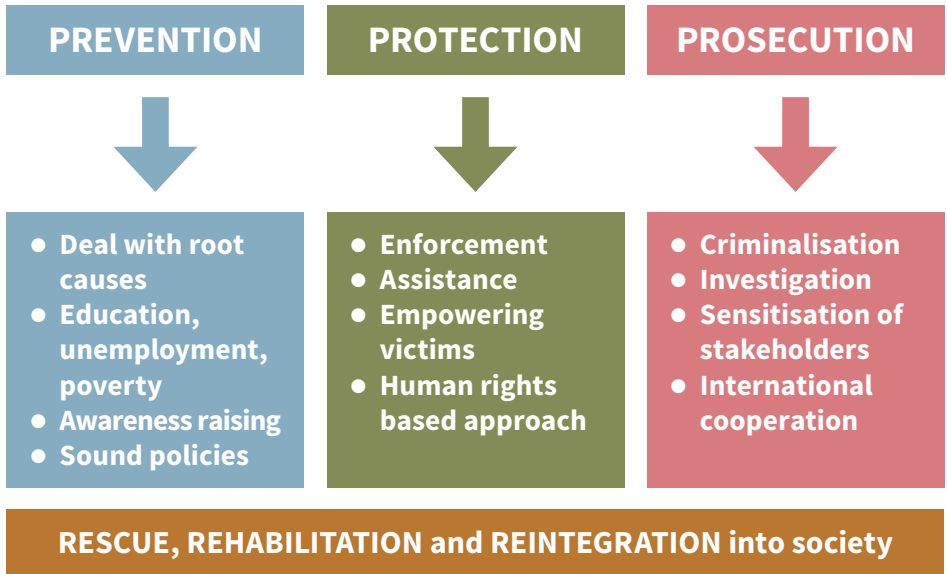
United Nations Convention against Transnational Organized Crime

The United Nations Convention against Transnational Organised Crime covers criminal activities by organised criminal groups operating across national borders. It establishes four offences: (a) participation in an organized criminal group; (b) money laundering; (c) corruption; and (d) obstruction of justice. It also promotes international cooperation against organised crime, through provisions on extradition, mutual legal assistance, transfer of proceedings and law enforcement cooperation.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The Protocol supplements the UN Convention against Transnational Organised Crime, and is the key international agreement relevant to trafficking in persons. It provides a comprehensive definition of trafficking and aims (a) to prevent and combat trafficking in persons, paying particular attention to women and children; (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and (c) to promote cooperation among States Parties in order to meet those objectives. Each State Party, which includes Namibia, is required to adopt national laws which criminalise trafficking.

The Protocol also introduced the “3P” paradigm for action on trafficking: prevention, protection, and prosecution.



Convention on the Rights of the Child

Article 35 of this Convention requires all States Parties to take appropriate measures to prevent abduction of, sale of, or traffic in children for any purpose or in any form. Article 19 also requires States Parties to take appropriate measures to protect children from all forms of violence and exploitation and Article 32 highlights the right of children to be protected from economic exploitation and work that could be harmful to them. The Convention does not provide a definition of trafficking.

Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

This Protocol to the UN Convention on the Rights of the Child addresses the sale of children, defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”. In this context, the Protocol requires that States Parties criminalise the following acts: (i) offering, delivering or accepting a child for the purpose of (a) sexual exploitation, (b) transfer of organs for profit, and (c) forced labour; and (ii) improperly inducing consent, as an intermediary, for the adoption of a child in violation of international laws on adoption. Furthermore, States Parties are also required to criminalise child prostitution and child pornography.

International Labour Organisation (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

This Convention identifies the worst forms of child labour as (a) all forms of slavery or similar practices, including the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) using children for prostitution or pornography; (c) involving children in unlawful activities; and (d) work that is likely to be harmful to children.

Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption

This Convention is an important international tool which ensures that safeguards are in place to prevent abduction, sale of, and trafficking in children in the context of intercountry adoptions.

African Charter on the Rights and Welfare of the Child

Article 29 of this Convention obligates States Parties to take appropriate measures to prevent abduction, sale of, or trafficking in children for any purpose or in any form, by any person, including the parents or legal guardians of the child. Article 15 also requires States Parties to take all appropriate measures to protect children from all forms of economic exploitation and from performing any work that could be harmful to them. Article 16 requires States Parties to take specific measures to protect children from torture and inhuman or degrading treatment. Furthermore, Article 27 obligates States Parties to protect children from all forms of sexual exploitation and abuse.

2.2 Namibian legislation

Prior to 2018, the primary legislative tool against trafficking was the **Prevention of Organised Crime Act 24 of 2004 (POCA)**, supplemented by the prohibition on forced labour set out in the **Labour Act 11 of 2007** – because forced labour is one of the common purposes of trafficking.

Trafficking in children was addressed by a chapter of the **Child Care and Protection Act 3 of 2015**. However, before that Act was brought into force, Parliament repealed this chapter along with the provisions on trafficking in POCA to consolidate all

of the provisions on the trafficking of adults and children in one single statute, the Combating of Trafficking in Persons Act.

The aim of the Combating of Trafficking in Persons Act 1 of 2018 is to prevent and combat trafficking in persons, to provide measures to protect and assist victims, to criminalise trafficking, and to give effect to Namibia's international obligations on this issue. The Act also includes special provisions on the trafficking of children.

Objects of Combating of Trafficking in Persons Act

The objects of this Act are to –

- (a) give effect to Namibia's obligations relating to the trafficking in persons in terms of international agreements binding on Namibia, especially the trafficking in persons protocol;
- (b) prevent and combat trafficking in persons;
- (c) provide for –
 - (i) the prosecution of persons who commit offences in terms of this Act; and
 - (ii) appropriate penalties; and
- (d) provide measures for the protection of and assistance to victims of trafficking.



Protest in front of Oshakati Magistrate's Court in October 2018

Source: "Oshakati human trafficking suspects bail application continues", *Namibia Daily News*, 3 October 2018

3. The crime of trafficking in persons

3.1 Crime of trafficking where the victim is an adult

Trafficking is a crime. If the victim is an adult, trafficking in persons involves three elements: an action, a means, and the purpose of exploitation. In other words, one element from each of the three columns below must be present for the crime of trafficking where the victim is an adult.

TRAFFICKING IN ADULTS		
ACTION	MEANS	EXPLOITATION
<ul style="list-style-type: none">● Recruits● Transports● Delivers● Transfers● Harbours● Sells● Exchanges● Leases● Receives	<ul style="list-style-type: none">● Threat● Use of force or other forms of coercion● Abduction● Fraud● Deception● Kidnapping● Abuse of power or abuse of position of vulnerability● Giving or receiving of payments or benefits to obtain the consent of a person who has control over another person	<ul style="list-style-type: none">● Prostitution or sexual exploitation● Forced labour or services, prohibited child labour or economic exploitation● Slavery● Debt bondage● Forced marriage● Involuntary servitude● Criminal exploitation● Removal of organs or body parts● Impregnation of a female against her will for the purpose of selling the child● Other kinds of exploitation

Is it possible to consent to trafficking?

No. It is not possible to consent to trafficking. Once it is established that one or more means in the middle column above were used, there is no possibility of meaningful consent by the adult victim.

3.2 Crime of trafficking where the victim is a child

Special considerations apply to persons under the age of 18 years. If the victim is a child, the crime takes place as long as there is an action for the purpose of exploitation. In other words, one element from each of the two columns below must be present for the crime of trafficking where the victim is a child.

TRAFFICKING IN CHILDREN	
ACTION	EXPLOITATION
<ul style="list-style-type: none">● Recruits● Transports● Delivers● Transfers● Harbours● Sells● Exchanges● Leases● Receives	<ul style="list-style-type: none">● Prostitution or sexual exploitation● Forced labour or services, prohibited child labour or economic exploitation● Slavery● Debt bondage● Forced marriage● Involuntary servitude● Criminal exploitation● Removal of organs or body parts● Impregnation of a female against her will for the purpose of selling the child● Some other kind of exploitation

Why are “means” not applicable to the trafficking of children?

In the case of adults, it is necessary to prove that some “means” were used to take away the adult’s ability to give free consent. But it is not necessary to prove that any “means” were used in respect of children, because a child can never consent to exploitation under any circumstances.

I thought that the man in the bakkie was giving me a lift to Windhoek, but I fell asleep and he drove me here. I am not even sure where this farm is! Now I am far from home with no money and no phone, and this man is forcing me to make charcoal for him. All I really want is to get back home.



This is trafficking because there is an **ACTION** (transporting), **MEANS** (kidnapping) and a purpose of **EXPLOITATION** (forced labour or services).

My parents died when I was still a baby. I was excited when my auntie said that I could live with her. I thought that life might be better for me at her house in town. But now I just work all day. I do the housework and take care of her children. I have no time for school or play. I agreed to come and live here, but I did not think it would be like this.



This is trafficking because there is an **ACTION** (transporting and harbouring) and a purpose of **EXPLOITATION** (forced labour or services).
No MEANS are required when a child is involved.

3.3 Key definitions

To understand the crimes, it is important to understand the terms used in the tables above.

“**child**” = a person under the age of 18

“**criminal exploitation**” = not defined in the Combating of Trafficking in Persons Act

This is not a common term in Namibian law or international law. The term is increasingly used to describe a type of exploitation where an individual or group takes advantage of an imbalance of power, to coerce, control, manipulate or deceive a child or a young person to engage in criminal activity for the benefit of another person.

My uncle took me with him to the coast and made me go around town with him and his gang. I have to be the look-out while they are breaking into empty holiday houses. I don't like doing this at all! What will happen to me if the police catch us?



“**debt bondage**” = when someone promises to perform services in exchange for a debt, and that person remains trapped and unable to pay off the debt because the debt is unreasonably high, the length or nature of the services are not defined or limited, or when the value of the person's services is not applied towards the debt.

I will drive you across the border, but it will cost you N\$100 each for transport. You can pay it off by working on my farm.

You forgot about interest! Now you owe me N\$1 000 each for transport, and you must also pay me for your food and accommodation each month. It is going to take you a very long time to pay me what you owe me! Who can say how long...?



“forced labour or services” = labour or services obtained through threats, force, intimidation, exploitation or other forms of coercion or physical restraint

“forced marriage” = a marriage that does not involve the free and full consent of both spouses or violates any of the laws on civil and customary marriages in Namibia

“prohibited child labour” = any child labour which violates the Namibian Constitution, the Labour Act or the Child Care and Protection Act.

“removal of organs or body parts” = the removal or trade in any human organ or other body part in violation of a law

This definition does not apply to the situation where a person voluntarily donates an organ or a body part according to the proper legal procedures for this – such as agreeing to give a relative a kidney or bone marrow while still alive, or providing that certain body parts may be used for medical or research purposes after death.

“servitude” = a condition in which the labour or services of a person are provided or obtained through threats of harm

The term “involuntary servitude” is not defined in the Combating of Trafficking in Persons Act, but it emphasises the fact that this refers to servitude which does not involve any meaningful consent.

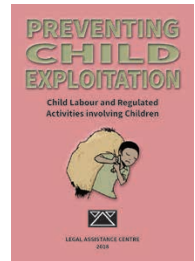
“sexual exploitation” = the commission of any criminal offence of a sexual nature

“slavery” = not defined in the Combating of Trafficking in Persons Act

- “Slavery” is defined in general in the 1926 Slavery Convention as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Namibia is not a party to this Convention (as of 2018), but it is still a useful reference point.
- “Slavery” with respect to children is defined in the Child Care and Protection Act as forcing a child by any means to submit to the control of someone else “as if that other person were the owner” of the child.

In terms of both of these definitions, extreme forms of control over another person can amount to “slavery”, even if the person in question was not actually “bought” or “sold”.

To find out what these laws say about child labour, consult the LAC booklet on child labour.



3.4 Excluded defences to charges of trafficking

In criminal law, a person who is accused of a crime may raise a defence (such as self-defence, consent or incapacity) in an attempt to avoid a conviction. This general principle also applies to crimes involving human trafficking, but the Combating of Trafficking in Persons Act specifically excludes certain defences. In other words, someone charged with a crime under the law on trafficking cannot raise any of the “excluded defences” shown in the table below.

EXCLUDED DEFENCE	ADULT	CHILD
<p>What if the victim consented to the intended exploitation?</p>	<p>It is not possible to consent to trafficking. This understanding is reflected in the “means” element of the definition of trafficking. Once it is established that one or more of the listed means were used, consent is irrelevant and cannot be used as a defence.</p>	<p>Consent is not a defence. A child can never give consent to being exploited.</p>
<p>What if the intended action never occurred?</p>	<p>This is not a defence if there was an intent to act.</p>	
<p>What if the intended exploitation never occurred?</p>	<p>This is not a defence if there was an intent to exploit.</p>	
<p>What if the victim previously engaged in prostitution?</p>	<p>This is not a defence. This does not matter.</p>	
<p>What if the victim previously engaged in pornography?</p>	<p>This is not a defence. This does not matter.</p>	
<p>What if the victim was previously convicted of a criminal offence?</p>	<p>This is not a defence. This does not matter.</p>	

4. Penalties for trafficking in persons

4.1 Punishment

First conviction: fine of up to N\$1 million, or imprisonment for up to 30 years, or both.

Later convictions: fine of up to N\$2,5 million or imprisonment for up to 50 years, or both.



What factors will the court consider in sentencing?

When sentencing a convicted trafficker, the court must consider various aggravating factors, including:

- the offender's role in the trafficking process
- previous convictions relating to trafficking
- whether the offender caused the victim to become addicted to drugs
- the age of the victim
- the conditions under which the victim was kept
- whether the victim was held captive
- the extent of abuse the victim suffered
- the physical and psychological effects the abuse had on the victim
- whether the offence involved organised crime
- the nature of the relationship between the offender and the victim
- the state of mental health of the victim
- whether the victim had any physical disability.

What is "organised crime"?

One of the factors relevant to sentencing is whether the trafficking was part of organised crime. Neither the Combating Trafficking in Persons Act nor the

Prevention of Organised Crime Act (POCA) contains a definition of “organised crime”. This term is generally used to describe a situation where a group of at least three people work together to commit serious crimes, such as trafficking in persons.

4.2 Victim compensation

Under the Combating of Trafficking in Persons Act, the court may order the convicted trafficker to compensate the victim, which can take place at the request of the victim or at the suggestion of the court. Compensation is available for:

- (a) damage to or loss of property, including money, suffered by the victim; and
- (b) loss of income and support suffered by the victim.

However, a victim cannot use this procedure to get compensation relating to personal injuries suffered in the course of the trafficking, such as pain and suffering, medical costs or disability. The victim would have to bring a separate court case against the trafficker to seek compensation for these things. Still, the possibility of getting some compensation in the course of the criminal trial has benefits. It helps victims get some compensation without the high cost of a separate court case and without the risk of re-traumatization from having to tell their stories openly in court multiple times.



Source: *Global Report on Trafficking in Persons 2016*, United Nations Office on Drugs and Crime (UNODC), 2016 at page 8 (www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf).

5. Other crimes related to trafficking in persons

The Combating of Trafficking in Persons Act covers a range of crimes related to trafficking. To prevent trafficking, it is necessary to criminalise all types of involvement in trafficking.

5.1 Crimes punishable by the same penalty as trafficking

First conviction: fine of up to N\$1 million, or imprisonment for up to 30 years, or both.

Later convictions: fine of up to N\$2,5 million or imprisonment for up to 50 years, or both.



Adoption for purposes of exploitation: It is a crime for any person to adopt a child, or to arrange the adoption of a child, for the purpose of exploiting that child. This crime is punishable by the same penalty as trafficking.

Debt bondage: It is a crime to make another person enter into debt bondage. In other words, it is a crime to trap another person in a situation where he or she is unable to pay off a debt because the debt was unreasonably high, the length or nature of the services was not defined or limited, or the value of the person's services was not applied towards the debt. This crime is punishable by the same penalty as trafficking.

Using services of trafficking victims: It is a crime to benefit from the services of trafficking victims. It is also a crime to use or allow another person to use the services of trafficking victims. This crime is punishable by the same penalty as trafficking.

I really need some help on my farm. Do you know of anyone?



I do! I transported several young boys to my farm and they have been working very hard for me. They owe me lots of money, so they work long hours for free. They could also work for you two days each week, and you could pay their salary directly to me.

That sounds perfect. They can start on Monday.

Involvement in trafficking crimes: It is a crime to attempt to commit a trafficking-related crime or to work together with another person to commit a trafficking-related crime. It is also a crime to recruit, advise, encourage or command another person to commit a trafficking-related crime. These crimes are punishable by the same penalty as trafficking.

5.2 Crimes punishable by a different penalty from trafficking

Any conviction: fine of up to N\$1 million, or imprisonment for up to 30 years, or both.



Facilitating trafficking in persons:

- It is a crime to help traffickers.
- It is a crime to allow someone else to use your house for the purpose of trafficking.
- It is a crime if you knew or should have known that your house was being used for the purpose of trafficking, but failed to report this to a police officer.
- It is a crime to advertise information in any way (including via print, radio, television or online) that promotes human trafficking or would make the crime easier.
- It is a crime to provide money for, control or arrange any of the crimes above.

Electronic communication service providers may be charged with facilitating trafficking if they fail to uphold their special duties. The term “electronic communication service providers” refers to companies or other entities that provide email and internet services. Service providers who become aware that a communication stored or transmitted over their system contains information in aid of trafficking must report this to a police officer. They must also take reasonable steps to preserve evidence and prevent continued access to such communications. Failure to take these steps is a crime.

Abusing identification and travel documents: It is a crime to possess, destroy, confiscate, conceal or tamper with identification or travel documents in order to help traffickers.

Fraudulent identification and travel documents: It is a crime to make, give or sell fraudulent identification or travel documents in order to help traffickers.

Liability of carriers: It is a crime to knowingly transport trafficking victims within Namibia or across international borders. This applies to any transport provider who suspects that a passenger is a victim of trafficking but fails to immediately make a report to a police officer. In addition to the criminal penalty, the transport provider may be liable to pay expenses relating to the victim’s care, accommodation or transportation back to the place or country of origin.



The driver is ignoring his legal duty to report suspected trafficking to the police. He is committing a crime. If he is caught and convicted, he will have to pay a fine or go to prison, and he may also have to pay compensation to the victims.

Involvement in trafficking-related crimes: It is a crime to attempt to commit one of the crimes listed here, or to work together with another person to commit one of these crimes. It is also a crime to recruit, advise, encourage or command another person to commit one of these crimes. The penalty for such involvement is the same as for the penalty for committing the crime directly.

6. Extraterritorial jurisdiction

What if trafficking or one of the crimes related to trafficking is committed outside Namibia?

“Extraterritorial jurisdiction” refers to situations where a court in Namibia has the power to put someone on trial for something that happened in another country. The Combating of Trafficking in Persons Act allows this if the actions would have been a crime in Namibia, regardless of whether or not these actions were crimes in the country where they took place. A person can be put on trial in the High Court for any of the crimes covered by the Combating of Trafficking in Persons Act in any of the following situations:

- The victim of the alleged crime is a citizen or resident of Namibia.
- The accused person is a citizen of Namibia.
- The accused person is a resident of Namibia.
- The accused person is present in Namibia after the crime took place.
- For some reason, Namibia did not send the accused to face trial in the country where the crime took place, and there is no request from that other country to do so.
- The accused person is part of a company or some other legal entity registered in Namibia.

That man is from South America. We got reports that he has been trafficking children for prostitution between two South American countries which have no laws on trafficking.



So now he has come to Namibia on holiday! We can arrest him and put him on trial in Namibia for trafficking if we have enough evidence.

7. Reporting cases of trafficking

What must you do if you know about or suspect trafficking?

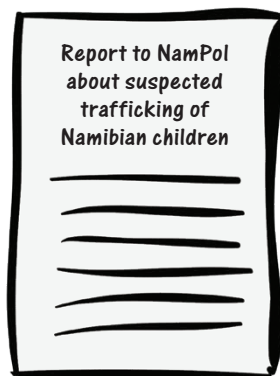
If you have information about trafficking or possible trafficking, you must make a report to the police or a state-employed social worker. Your identity will be kept confidential, unless the court orders otherwise.

A member of the police who receives a report of possible trafficking from a member of the public OR who learns of possible trafficking in any other way *must* make a report to a state-employed social worker, provide the victim with any immediate assistance needed and take the victim to a safe place if necessary.

A social worker who receives a report of trafficking from a member of the public OR from a police officer *must* first make an assessment to see if the case appears to involve a victim of trafficking. A social worker who believes that the case involves a victim of trafficking will give the victim a document to this effect, to help the victim access other forms of assistance.

If the victim is a child, the social worker must arrange an investigation to determine whether protective services are needed. (The term “protective services” covers a wide range of state interventions which can improve a child’s safety, security or well-being.) Some examples of protective services that might apply to a child trafficking victim include:

- returning a child to the child’s parent or guardian under the supervision of a social worker
- if the child doesn’t have a parent or guardian, or if the child’s parent or guardian was involved in the trafficking, placing the child in the care of a relative, foster parent, or children’s home
- providing treatment for addiction to alcohol or drugs.



The police think that your father may have taken money from the man who wanted to force you to marry him. You can stay here while we investigate, to see if it will be safe for you to go back home. These people will take good care of you, and I will be coming by every day to check on you and to see if you need anything.



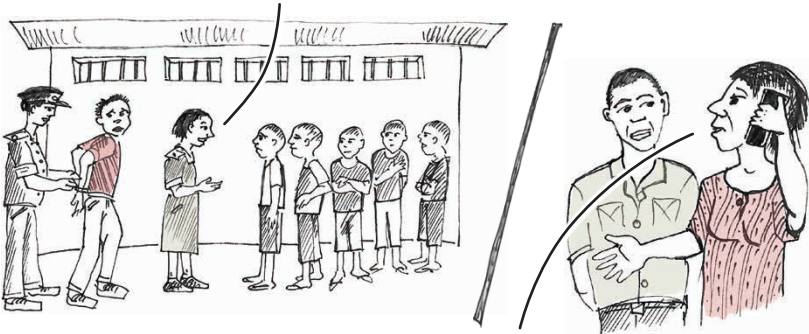
8. Assisting trafficking victims

8.1 Assistance for any trafficking victim

What services are available to victims of trafficking?

Both adult and child victims may be provided with services such as housing, counselling, information about their legal rights in a language they understand, medical care and psychological counselling, and measures to protect the victim's safety. Government may provide such services directly, or may designate a non-government person or organisation to assist. These services must be made available to trafficking victims who need them, even if the victim is from another country.

We have just arrested the owner of this factory on charges of human trafficking. Please come with us. We will make sure that you have somewhere safe to stay while we are investigating, and we want you all to have medical examinations because you have been working with some dangerous chemicals.



Hello, my name is Sharon and I am a social worker. I am here with a potential trafficking victim from your country. He does not speak English. Is there somebody at your Embassy who can provide French translation services?

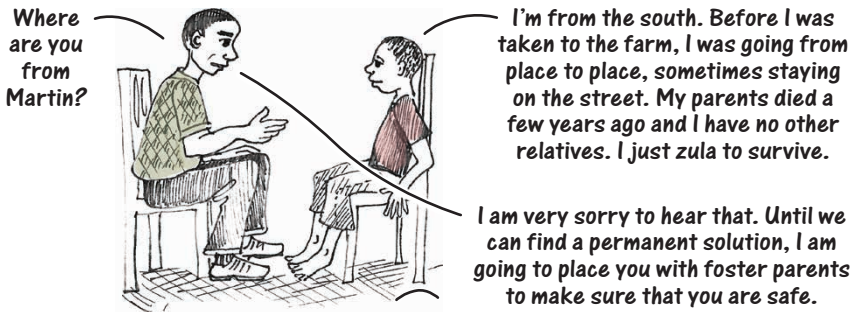
We should treat trafficking victims from other countries who are found in Namibia in the same way that we would like the governments of other countries to assist Namibian trafficking victims.

Trafficking victims may also be able to get compensation from the culprits during the criminal trial, for certain harms that resulted from the trafficking. This compensation can be reimbursement for loss of money by the victim, loss or damage to the victim's property or loss of income and support suffered by the victim. The victim could bring a separate civil lawsuit to get compensation for other forms of harm caused by the trafficking. (See section 4.2 of this booklet on Victim compensation.)

8.2 Special assistance for child trafficking victims

What special assistance is available to children?

A child must be placed in temporary safe care or in the care of a designated person or organisation pending the completion of an investigation. Such a placement does not disqualify the child from any state grant provided in terms of the Child Care and Protection Act.



What if the child's parent or guardian cannot afford to escort the child back home?

Government has a duty to assist in situations where a child's parent, guardian or caregiver lacks the financial means to travel to the place where the child is in order to take the child home. An adult (such as the child's parent or relative, or a social worker) can be authorised to escort the child who was trafficking at state expense. The State can provide the funds to move the child from the place where the child was found back to the place from where the child was trafficked, or to any other suitable place – such as where the child's parent or caregiver resides.

I have great news for you! We have completed our investigation and it is safe for you to go home. We can call your mother and she can pick you up this weekend.



We are so happy! My brother and I miss mame so much! But our home is very far away and my family doesn't have money to pay for transport.

Do not worry, my children. I will take you home and the government will pay the cost.

What if the child's parent was involved in the trafficking?

If the parent or guardian trafficked the child - or allowed the trafficking to take place - the court may suspend any or all parental responsibilities and rights, in addition to putting that parent or guardian on trial for any applicable crimes. The court may also place the child involved in temporary safe care, until a long term solution is found for the child.

How did you end up at Trevor's house?



My parents are friends with Uncle Trevor. I think they needed money and Uncle Trevor said he would pay them N\$500 if they would agree to let me work for him. I didn't have a choice ...

Later in the week ...

I understand that your Uncle Charlie lives in Windhoek. I have a court order that will allow you to go and live with him. He is expecting you. You will be safe there.



What if the child is from another country?

Child victims from other countries are entitled to the same services, including public health care and education, as any other child in Namibia. If the child is in the country illegally, the court may order that the child be assisted in applying for asylum. A finding that the child needs protective services under the Child Care and Protection Act authorises the child to remain in Namibia for the duration of the children's court order.



8.3 Special assistance for trafficking victims from other countries found in Namibia

Are services available in Namibia to trafficking victims from other countries?

Yes. Services must be provided to any person reasonably suspected to be a victim of trafficking, without consideration of their country of nationality or residency.

Will victims from other countries be allowed to stay in Namibia?

If necessary, immigration officers must issue a visitor entry permit to a victim, allowing that victim to remain in Namibia for 90 days. This time period may be extended. Police officers and social workers must inform a victim who is not a Namibian citizen or permanent resident of this right. Trafficking victims from outside Namibia may be given a temporary residence permit so that they can assist with the investigation and prosecution of the case against the trafficker. The permit may be extended if necessary.

Will victims from other countries be returned to their country of origin?

Victims will be returned to their country of origin, or to the country from where they were trafficked, only after checking that they will be safe. This involves considering the safety of the victim while travelling home, the availability of suitable arrangements for the care and safety of the victim at home, and the possibility that the victim might be harmed, killed or trafficked again. If the victim is a child, the assessment must take into account what will be in his or her best interests.

The Zambian child is currently in a children's home in Namibia. I understand that her parents are no longer alive. Would any of her relatives be able to care for her?



8.4 Special assistance for Namibian trafficking victims found in other countries

What if someone from Namibia is the victim of trafficking in another country?

The government must facilitate the return of any Namibian citizen or permanent resident found to be a victim of trafficking in another country. The Namibian government will provide identification and travel documents if necessary to assist the victim to travel to Namibia.

Hello, I am here with a potential trafficking victim who is from Namibia. She says that her parents forced her to marry an older man in our country, who brought her here last year. She desperately wants to go back home, but the man has taken away her passport.



Thank you for contacting us. Of course we will help. We can arrange the necessary travel documents for her, and we will assist with the investigation.

8.5 Victims not criminals

Victims of trafficking will not be prosecuted for certain crimes which were a direct result of the trafficking:

- entering or remaining in Namibia without proper permission to be in the country
- using false documents to cross borders
- being involved in any illegal activity which they were forced into doing.

Boys, please don't be scared. We have just arrested John. We know you don't have proper documentation to be in Namibia, but you are not in trouble. This is not your fault. He is the criminal, not you – you are victims of a terrible crime.




Trafficking in persons is a serious human rights violation that affects thousands of women, men and children around the world. It is difficult to know for sure how widespread human trafficking is in Namibia because, like gender-based violence, trafficking is often a concealed crime. Even if the crime is not yet common in Namibia, it is important to take measures to prevent trafficking, protect victims and prosecute all the persons responsible.

The Combating of Trafficking in Persons Act consolidates all of Namibia's trafficking-related laws into a single statute. It imposes reporting obligations on members of the public, provides serious penalties for trafficking-related crimes and provides for comprehensive victim assistance. It is a useful law, but laws require robust implementation to be effective. Do your part – report any suspected trafficking to the police or to a government social worker!



#ENDviolence Against Children

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unicef 

**SLAVERY
TRAFFICKING
DANGEROUS WORK
PROSTITUTION**

These types of **child labour**

are all forms of

violence
against children.

MAKE THE INVISIBLE VISIBLE

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Comic available at the Legal Assistance Centre
or online at www.lac.org.na

WHAT IS TRAFFICKING IN PERSONS?



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