



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GOVERNMENT NOTICES

No. 335	Commencement of Combating of Trafficking in Persons Act, 2018	1
No. 336	Regulations under Combating of Trafficking in Persons Act, 2018	1

Government Notices

MINISTRY OF GENDER EQUALITY AND CHILD WELFARE

No. 335 2019

COMMENCEMENT OF COMBATING OF TRAFFICKING IN PERSONS ACT, 2018

Under section 29 of the Combating of Trafficking in Persons Act, 2018 (Act No. 1 of 2018), I determine that that Act comes into operation on the date of publication of this notice in the *Gazette*.

D. SIOKA

**MINISTER OF GENDER
EQUALITY AND CHILD WELFARE**

Windhoek, 24 October 2019

MINISTRY OF GENDER EQUALITY AND CHILD WELFARE

No. 336 2019

REGULATIONS UNDER COMBATING OF TRAFFICKING IN PERSONS ACT, 2018

Under section 27 of the Combating of Trafficking in Persons Act, 2018 (Act No. 1 of 2018), after consultation with the Minister responsible for home affairs and immigration and the Minister responsible for international relations, where it relates to powers exercised or duties performed by

them under the Immigration Control Act, 1993 (Act No. 7 of 1993), I have made the regulations set out in the Schedule.

**D. SIOKA
MINISTER OF GENDER
EQUALITY AND CHILD WELFARE**

Windhoek, 17 October 2019

SCHEDULE

ARRANGEMENT OF REGULATIONS

1. Definitions
2. Designation of state employed social workers to assess and determine persons as victims of trafficking
3. Reports of trafficking in person or suspected trafficking
4. Police assistance to victims of trafficking
5. Assessment and determination of persons as victims of trafficking
6. Revocation of determination as victim of trafficking
7. Provision of services to victims of trafficking
8. Assistance to foreign victims in obtaining visitors entry permits or temporary residence permits
9. Assistance to children who are victims of trafficking
Annexure: Forms

Definitions

1. In these regulations a word or an expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

“state employed designated social worker” means a state employed social worker designated in terms of section 12(6) of the Act; and

“the Act” means the Combating of Trafficking in Person Act, 2018 (Act No. 1 of 2018).

Designation of state employed social workers to assess and determine persons as victims of trafficking

2. The Minister may designate a state employed social worker under section 12(6) of the Act for the purpose of assessing and determining the status of persons as victims of trafficking -

- (a) if the social worker is registered as a social worker in terms of the Social Work and Psychology Act, 2004 (Act No. 6 of 2004); and
- (b) if the Minister is satisfied that the social worker has the capacity and skills to make the assessment and determination of persons as victims of trafficking.

Reports of trafficking in person or suspected trafficking

3. (1) A police officer who -
 - (a) has information about trafficking of a person or who reasonably suspects that a person is being trafficked; or
 - (b) receives a report under section 12(1) of the Act and reasonably suspects that a person concerned is being trafficked,

must make a report to a state employed social worker no later than 24 hours of having the information about the trafficking or becoming aware of the suspected trafficking or of receipt of the report.

- (2) A state employed social worker who receives a report -
 - (a) under section 12(1) of the Act must immediately notify a police officer to investigate the matter, if the report came from a person other than a police officer; and
 - (b) under section 12(1) or (2) of the Act, must not later than 24 hours of receipt of the report, notify a state employed designated social worker to assess and determine whether the person is a victim of trafficking as contemplated in section 12(4)(a) of the Act.

Police assistance to victims of trafficking

4. The police assistance contemplated in section 12(3)(a) of the Act includes providing a victim of trafficking with transport to a social worker, hospital, court or to any other place for purposes of protecting the victim or for an investigation for the purposes of the Act.

Assessment and determination of persons as victims of trafficking

5. (1) A state employed designated social worker must make an assessment and determination of whether a person is a victim of trafficking as contemplated in section 12(4)(a) of the Act -

- (a) within 48 hours of receipt a report in terms of section 12(1) or (2) of the Act; and
- (b) on a form substantially corresponding to Form 1.

(2) If the state employed designated social worker makes a determination that a person is a victim of trafficking as contemplated in section 12(4)(a) of the Act, the state employed designated social worker must issue the person with a document, set out in a form substantially corresponding to Form 2, indicating that the person is a victim of trafficking.

(3) If the state employed designated social worker makes a determination that the child is a victim of trafficking, the state employed designated social worker must, within 48 hours of making the determination, refer the child to a designated social worker for an investigation in terms of section 139 of the Child Care and Protection Act to determine whether the child is in need of protective services.

Revocation of determination as victims of trafficking

6. (1) Subject to subregulation (4), a state employed designated social worker may revoke a determination that a person is a victim of trafficking if -

- (a) the determination was made on the basis of misleading, false or incorrect information; or
- (b) there are reasons to believe that the determination was made incorrectly because of -
 - (i) any substantial fraud by a person in respect of a matter relating to the determination; or
 - (ii) an error of law or fact by the state employed designated social worker who made the determination.

(2) For purposes of revoking a determination that the person is a victim of trafficking, the state employed social worker must carry out a re-assessment of the determination and determine whether there are grounds for revoking the determination.

(3) Before a state employed social worker revoke the determination that the person is a victim of trafficking, the state employed social worker must give the person -

- (a) notice of the social worker's intention to revoke the determination; and
- (b) an opportunity to make any representation on the intended revocation of the determination within the period specified in the notice.

(4) A state employed designated social worker who made the determination under section 12(4)(a) of the Act may not be the same state employed designated social worker, under subregulation (2) to -

- (a) carry out the re-assessment of the determination; and
 - (b) determine whether there are grounds for revoking the determination.
- (5) If the state employed designated social worker -
- (a) after the re-assessment of a determination in terms of subregulation (2) finds that there is a ground for the revocation of the determination; and
 - (b) revokes the determination,

the person to whom a document, set out on Form 2, indicating that the person is a victim of trafficking was issued must surrender the document to the state employed designated social worker.

(6) If the determination of a person as a victim of trafficking is revoked, the person may not make use of the document, set out on Form 2, issued to that person to acquire any assistance offered to victims of trafficking in terms of the Act or for any other reason.

(7) A person who contravenes subregulation (6) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Provision of services to victims of trafficking

7. (1) A person may be designated under section 13(1) of the Act to provide services to victims of trafficking if that person -

- (a) is a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995) or a legal aid counsel referred to in section 3 of the Legal Aid Act, 1990 (Act No. 29 of 1990);
- (b) is a medical practitioner as defined in section 1 of the Medical and Dental Act, 2004 (Act No. 10 of 2004) or a registered nurse as defined in section 1 of the Nursing Act, 2004 (Act No. 8 of 2004);
- (c) is a social worker as defined in section 1 of the Social Work and Psychology Act, 2004 (Act No. 6 of 2004); or
- (d) is a police officer.

(2) An organisation may be designated under section 13(1) of the Act to provide services to victims of trafficking if that organisation -

- (a) is registered with the appropriate authority, in cases where registration is required;
- (b) is a non-profit organisation in the form of a trust registered under the law relating to the registration of trusts or is a legal person; and
- (c) in the opinion of the Minister, has the necessary staff capacity and expertise to provide the relevant services to victims of trafficking in terms of the Act.

(3) The referral of a victim of trafficking in person to a person or an organisation designated in terms of section 13 of the Act must be made on a form substantially corresponding to Form 3.

Assistance to foreign victims of trafficking in obtaining visitors entry permits and temporary residence permits

8. (1) A police officer or a social worker contemplated in section 12 of the Act must assist a foreign victim of trafficking in obtaining a visitors entry permit in terms of section 14 of the Act.

(2) The Minister must assign a state employed social worker to assist the foreign victim in obtaining the temporary residence permit in terms of section 15(1) of the Act.

Assistance to children who are victims of trafficking

9. (1) Before a child who is a victim of trafficking is returned to the place from where the child is suspected to have been trafficked or to any other suitable place, including a place where the child's parent or care-giver resides as contemplated in section 19(1) of the Act, the Minister must -

- (a) ensure that the state employed social worker dealing with the matter of trafficking in person has requested the police officer investigating the matter to conduct an investigation into the question of whether the child will be safe at the place in question and the police officer must compile a report on the investigation and submit it to the Minister;
- (b) ensure that the police officer investigating the matter has carried out the investigation, with the co-operation of appropriate authorities, if the place in question is in another country;
- (c) consider the report referred to in paragraph (a); and
- (d) in the best interests of the child, determine whether an adult is required to escort the child and decide who should escort the child to the place.

(2) The Minister must, based on the report referred to in subregulation (1)(a), determine whether the child's parent, guardian, care-giver or other person with parental responsibilities and rights in respect of the child has the financial means to pay for the travel of the child and the child's escort.

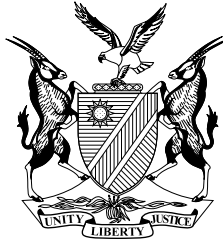
(3) A state employed social worker dealing with the matter of trafficking in person must compile a report on whether the child's parent, guardian, care-giver or other person with parental responsibilities and rights in respect of the child has the financial means to pay for the travel of the child and the child's escort.

-
- (4) If the Minister -
- (a) authorises under section 19(1) of the Act that an adult must escort a child at State expense; or
 - (b) determines under subregulation (2) that the child's parent, guardian, care-giver or other person with parental responsibilities and rights in respect of the child does not have the financial means to pay for the travel of the child,

the travel expenses of the child and the adult escorting the child must be paid out of the budget of the Ministry responsible for gender equality and child welfare.

(5) If the child who is the victim of trafficking is returned to Namibia in terms of section 18 of the Act, the state employed social worker dealing with the matter of trafficking in person must provide the appropriate on-going monitoring and services to the child and the family of the child in order to safeguard the well-being and safety of the child.

ANNEXURE



FORM 1

REPUBLIC OF NAMIBIA
(Section 12(4))
(Regulation 5(1))

ASSESSMENT AND DETERMINATION FORM FOR VICTIMS OF TRAFFICKING

Instruction:

This form is to be used by a state employed social worker during the assessment and determination of a person as victim of trafficking.

1.	Family Name(s):
2.	First Name(s):
3.	Gender: (M/F):
4.	Date of birth:
5.	Is the date of birth an estimate? [Yes/No]?
6.	Age estimate (medical doctor):
7.	Last place of residence in country of origin:
8.	Citizenship:
9.	Country of birth:
10.	Place of birth:
11.	Current legal status:

Additional Data - if the person is an unaccompanied child/ren (UMC)

1.	Contact details of legally appointed guardian:
2.	Contact details of the center hosting the UMC:
3.	Contact details of the parents/family in the country:
4.	Are the parents/family aware of the minor's current situation? [Yes/No-please explain]

5. Circumstances of arrival in the location/town/country (when, how, why, with whom the UMC arrived):

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Case and Interview Data

1. Type of referring organisation/individual: (NGO/ International organisation/ Law enforcement/ Immigration/ Government/ Embassy/ Helpline/ Self-referral-walk-in/ Family/ Friend/ Client/ Other):

.....

.....

.....

2. Specify (Name/location of organisation):

.....

.....

.....

3. Screening date: (dd-mm-yyyy):

4. Screening location:

5. Name of interviewer:

6. Position of interviewer:

7. Contact details of interviewer and organisation:

.....

.....

8. Screening language:

9. With interpreter? (Yes/No):

10. Name of interpreter:

11. Signature of interviewer: Signature of interpreter:

Entry into trafficking-process

1. How did the person enters the process?

Kidnapping		Family visit	
Sold by member of family		Friend visit	
Sold by non-family member		Marriage	
Adoption		Professional opportunity	
Foster care			
Residential Child Care Facility			
Educational opportunity		Other/ NA/ NK	

(a) Did entry in to the process involve recruitment? Yes No

(b) If YES, how was contact initiated between the individual and her/his recruiter?

Personal contact		Radio advertisement	
Employment agency		Television advertisement	
Travel agency		Newspaper advertisement	
Telephone/Cellphone		Magazine advertisement	
Internet advertisement (Cyber –online)		Other/ NA/ NK	

3. What activity did the person believe he/ she was going to be engaged in following arrival at the final destination?

Agricultural work		Prostitution	
Construction		Study	
Domestic work		Fishing	
Factory work		Low-level criminal activities	
Restaurants and hotel work		Child care	
Trade		Small street commerce	
Begging		Mining	
Transport sector		Other/ NA/ NK	

4. What was the person told would be his or her benefits following arrival at final destination?

4.1 Salary (Equivalent in NAD or USD per month):

4.2 Other benefits:

5. In which month/year did the individual enter into the process? (DD/MM/YY)

6. Was the individual a minor at the time of entry into the process? Yes or No

7. From which place/country did the person enters into the process?

8. What place/country was the last (or intended) destination?

9. (a) Did the individual travel alone? Yes or No

(b) If NO, who did the individual travel with?

Husband/ Wife		Recruiter	
Partner		Transporter	
Relative		Unknown persons	
Parents		Guardian	
Friend		Other/ NA/ NK	

10. Did the person spend any time in transit place(s)/country (ies)? Yes or No

10.1 If YES, please specify in chronological order:

10.2 Did s/he engage in any activity in this places/country (ies)? Yes or No

10.3 If YES, which activity?

Agricultural work		Prostitution	
Construction		Study	
Domestic work		Fishing	
Factory work		Low-level criminal activities	
Restaurants and hotel work		Child care	
Trade		Small street commerce	
Begging		Mining	
Transport sector		Other/ NA/ NK	

The exploitation phase

11. What activity has the person undertaken since her/his arrival in the last destination?

Agricultural work		Prostitution	
Construction		Study	
Domestic work		Fishing	
Factory work		Low-level criminal activities	
Restaurants and hotel work		Child care	
Trade		Small street commerce	
Begging		Mining	
Transport sector		Other/ NA/ NK	

12. (a) How old was the person when the activity began? (Age):

(b) How long did the most significant activity occur?

13. Were any of the following means used to control the individual during the activity or during the entry into the process? NK (Not known)

What?				By whom? (circle the relevant)
Physical abuse	Yes <input type="checkbox"/>	No <input type="checkbox"/>	NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other (specify)
Psychological abuse	Yes <input type="checkbox"/>	No <input type="checkbox"/>	NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Sexual abuse	Yes <input type="checkbox"/>	No <input type="checkbox"/>	NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Threats to individual	Yes <input type="checkbox"/>	No <input type="checkbox"/>	NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other

Threat of action by law enforcement	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Threats to family	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
False promises/deception	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Restricted/ denied freedom of movement	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Giving of drugs	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Giving of alcohol	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Denied medical treatment	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Denied food/drink	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Withholding of wages	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Withholding of identity documents	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Withholding of travel documents	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Debt bondage	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Excessive working hours	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Others	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
If exploited for prostitution (sexual exploitation):		
Denial of freedom to refuse client	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Denial of freedom to refuse certain acts	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
Denial of freedom to use a condom	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other
If OTHER means, please specify:	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	Receiver/ Exploiter/ Clients/ Other

14. (Question for the interviewer) Did the individual experience exploitation?

Yes No NK

14.1 If NO exploitation took place, was there any indication of a real and substantial threat of exploitation? Yes No NK

14.2 If YES, what were the reasons that exploitation never took place? Please choose the right option.

Rescue		NK	
Escape		Other (specify)	

Supporting documents

Additional supporting documents		
Police or other official report	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	
Identity documents	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	
Travel documents	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	
Medical reports	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	
Copies of employment contract or recruitment offer	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	
Personal writings by the individual	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	
Helpline reports	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	
Other	Yes <input type="checkbox"/> No <input type="checkbox"/> NK <input type="checkbox"/>	

Decision

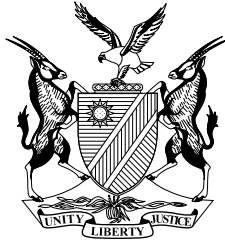
15. (a) Is the person a VICTIM of TRAFFICKING? Yes No

Please explain:

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- (b) If YES, decision made by whom?

Office, Ministry or Agency of the GRN. Please specify:		Service Provider. Please specify:	
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FORM 2**REPUBLIC OF NAMIBIA**

(Section 12(4)(b))
(Regulation 5(2))

LETTER OF RECOGNITION AS A VICTIM OF TRAFFICKING

Letter No. _____

Issued to:

(Full names of victim of trafficking)

It is hereby certified that the above-mentioned person has been assessed in terms of section 12(4) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) and it has been determined that the person is a victim of trafficking.

This letter of recognition as a victim of trafficking is with effect from _____

OFFICIAL STAMP

Name of state employed social worker making the determination

Date: _____

The following needs have been identified and discussed with the client:

<p><u>Social protection support:</u></p> <p><input type="checkbox"/> Safe accommodation</p> <p><input type="checkbox"/> Transportation Assistance</p> <p><input type="checkbox"/> Food Assistance</p> <p><input type="checkbox"/> Grant Preparation</p> <p><u>Education/Mental Health:</u></p> <p><input type="checkbox"/> Counselling/Therapy</p> <p><input type="checkbox"/> Educational support</p> <p><input type="checkbox"/> Support Group</p> <p><input type="checkbox"/> Psychiatric Services</p> <p><input type="checkbox"/> Substance abuse services</p>	<p><u>Health support:</u></p> <p><input type="checkbox"/> HIV-related care and support</p> <p><input type="checkbox"/> Mental health services</p> <p><input type="checkbox"/> Reproductive health / sexual health services</p> <p><input type="checkbox"/> Support related to primary care</p> <p><input type="checkbox"/> Other health support</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p><u>Others:</u></p> <p><input type="checkbox"/> Legal advice</p> <p><input type="checkbox"/> Economic empowerment</p> <p><input type="checkbox"/> Access to documentation</p> <p><input type="checkbox"/> Disability support</p> <p><input type="checkbox"/> Birth registration / civil registration support</p> <p><input type="checkbox"/> Safe return to Country/Region of Origin</p>
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Reason for referral: (cite date of referral received, initial cause of referral, brief summary of reason for referral):

Other information that may be helpful to this referral:

List supports or services being provided to the client:

List any documents accompanying this referral form:

Recommendations or expected results:

Name of person referring the client

Signature

Official Date stamp

Please complete and return the acknowledgement of receipt form below. Thank you for your cooperation.

Kindly acknowledge receipt of this document/referral letter. Return it to the above-mentioned office.

I _____ (Name and Surname of official) hereby acknowledge receipt of the above referral/document on _____ (Date) and undertake to attend to the problems/needs/complaints of the client(s).

Referral institution's Ref. No: _____

Our Ref. No: _____

Tel. No: _____

Official Date stamp

Signature of official

(On behalf of the institution/organisation providing assistance and protection in line with the needs identified in this referral form)
