

# PERSPECTIVES ON PARLIAMENT

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HUMAN TRAFFICKING

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## WHAT IS HUMAN TRAFFICKING?

Human Trafficking is a serious human rights violation that affects thousands of people around the world every year, especially women and children.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

Exploitation can mean a range of things: from prostitution or forced labour, to slavery or removing people’s organs to sell them.

A common misconception is that ‘trafficking’ is only about moving people from one place to another. But the definition above shows that a wide variety of acts that relate to exploiting other people count as trafficking.

## THE COMBATING OF TRAFFICKING IN PERSONS BILL



In recent times, the world has been shocked by footage of African men being sold as slaves in auctions in Libya. Libya has become known as a hub for human trafficking, as migrants from across Africa who are trying to travel to Europe are tricked by criminals and then often

forced to work. Human Trafficking is a major issue around the world. In 2016, law enforcement around the world identified more than 66,000 victims of human trafficking; however, the number of victims is likely much higher, as law enforcement does not find all victims of this crime.

One of the latest bills passed by the National Assembly was called the “Combating of Trafficking in Persons Bill.” The bill has a few aims: it wants to make it a crime to traffic people or to help those who are trafficking people, it wants to help victims of trafficking, and it wants to “give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.”

This issue of Perspectives on Parliament looks at the issue of Human Trafficking in Namibia.

### Incidents of Human trafficking in Namibia

Throughout the years, there have been several reports of trafficking in Namibia. Very often, the Namibian cases have to do with exploiting people, especially children, for their labour, as well as the sexual exploitation of women and children.

Press reports are often the only source of information on trafficking, but these cases are not always confirmed. Examples of reported cases include a case in which two Namibian girls were kidnapped and smuggled to South Africa; a case in which a Zambian national trafficked boys from Zambia to Namibia to work on farms; and a case in Walvis bay, in which a mother reportedly forced her daughter into prostitution. Several other cases can be found in various reports.

### Namibia’s Track Record in fighting trafficking

How has Namibia done in fighting trafficking? It is difficult to know for sure, because – as with all crimes – there is no way for us to know a crime has happened until it is uncovered.

We cannot know whether there are many undetected cases of trafficking, or whether the police catch most criminals involved with trafficking. However, we can look at whether the structures are in place to fight trafficking when it occurs: are there strong laws against it, does the government pay enough attention to the danger, and are there services for victims of trafficking when they are found?

The 2017 Trafficking in Persons Report – which rates all countries in the world on their efforts against human trafficking – reports that “the Government of Namibia does not fully merit the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.” In terms of prosecution, it noted that the government investigated eight alleged cases in 2016, and prosecuted seven people in two cases. Of the eight cases, five were for forced work and three for sex trafficking.

The report says that the government needs to improve its victim services. It noted that there were no written procedures on referring victims to care services, and no standard operating procedures for shelters. It notes that there were no official meetings by the committee to combat trafficking in 2016, while a planned awareness campaign had not started. The lack of resources and trained staff at shelters and awareness campaigns mean that “the government did not meet the minimum standards in several key areas.”

To improve Namibia’s ability to fight trafficking, the report recommended that government should finalize the anti-trafficking law (which it is now doing with this bill), to adopt a formal mechanism to provide victims with care, and to establish a national

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**“the government did not meet the minimum standards in several key areas.”**

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That said, the US Department of State’s 2017 Trafficking in Persons Report states that 12 victims of trafficking were identified by the Namibian government in 2016.

action plan against trafficking, amongst others. There is, clearly, still room for improvement.

## FOCUS ON WOMEN AND CHILDREN

Women and children are a special focus of anti-trafficking efforts. In Fact, the United Nations Protocol on Preventing Trafficking specifies women and children in its title, and Namibia’s new bill says it aims to protect victims “especially women and children.”

In 2007, a delegation of three Angolan and three Namibian MPs visited the border region between the two countries. They wanted to investigate the increase in women who were victims of trafficking, as well as child trafficking along the border. The delegation wrote a report saying that it was told of several cases of children and women being trafficked:

“Children and women were reportedly trafficked and ended up serving as domestic workers and labourers... as a result they often lacked access to basic necessities such as education, health-care and citizenship.”

In 2009, a report by the Ministry of Gender Equality and Child Welfare raised concerns about a practice in Namibia where poor families in rural areas send a child to their relatives. If these children have to work without compensation, this could be trafficking.



# PREVIOUS LAWS IN NAMIBIA

**Before the introduction of this new bill, there were already several pieces of legislation in Namibia that deal with trafficking in some way.**

### ***The Constitution***

In a broad sense, the Constitution of course protects the human rights of Namibians, which includes the right to not be trafficked. Article 9 prohibits “slavery and forced labour,” and article 15 specifically states that children have the rights to “protection from economic exploitation.” More generally, article 95 says the state must “actively promote and maintain the welfare of the people” and notes several things government should do that would protect trafficking victims.

### ***The Prevention of Organised Crime Act (2004)***

This act covers a wide range of criminal activities often pursued by criminal organisations, including “the smuggling of migrants and trafficking in persons.” The law includes the text of the UN Convention against Transnational Organized Crime, and defines trafficking in exactly the same way as its Protocols (see box on page 1). According to the Act, anyone who participates in trafficking, or helps someone engaged in trafficking, can be sentenced to a fine of up to N\$1,000,000 or to prison for up to 50 years. However, apart from punishments, the Act is missing many important pieces: there is nothing on protecting or supporting victims, and it does not make a difference between adults and children as in international law. The law became effective in 2009.

### ***The Child Care and Protection Act (2015)***

This act contains a whole chapter on child trafficking. As opposed to the *Prevention of Organised Crime Act*, the *Child Care and Protection Act* has its own detailed definition of trafficking and related issues such as exploitation. It details – and forbids – a number of ways in which people can aid traffickers. It also protects the victims from being prosecuted – for example, if the victim is carrying a fake passport, they can not be prosecuted for this. Importantly, the Act also provides for assistance for victims of trafficking. This Act has not yet become a binding law.

### ***International Agreements***

Two international agreements that are binding on Namibia have trafficking as a major concern. The first is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. It is an addition to a UN Convention that Namibia has ratified, the Convention against Transnational Organised Crime. This protocol became binding on us in 2003, and has strongly influenced our own law: as discussed above, our Prevention of Organised Crime Act copies the definition of trafficking from this international document word for word. The protocol is attached to both the Prevention of Organised Crime Act and the Child Care and Protection Act.

The other document is the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*, which became binding on Namibia in 2016. It allows for cooperation between countries on a number of issues related to protecting children, including trafficking.

## **The Combating of Trafficking in Persons Bill**

As illustrated above, the government has done a lot of work in the last few years to live up to international standards when it comes to trafficking, passing the *Hague Convention and Child Care Act* – and this new Bill fulfils a key recommendation of the State Department report on trafficking mentioned above.

The Bill is clearly linked to our international agreements. The first objective of the Bill is to “give effect to the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.”

It is similar to the *Child Care and Protection Act* in its detailed definitions and prohibition of a range of acts that can contribute to trafficking. It also includes provisions for assisting victims. However, this Bill does not include some services that the Child Care and Protection Act wants. For example, it does not require that victims of child employment have to receive education opportunities, or a job if they want to and are old enough to have a job. In addition, the Bill says that victims should be provided with housing, whereas before, the law said victims should get housing with access to “food, water, clothes and bedding.”

Despite its shortcomings, the Bill represents a step forward in fighting human trafficking in Namibia. A comprehensive law that clearly defines the crime, and makes it illegal to help traffickers in a variety of ways, should make it easier for law enforcement to convict traffickers when they catch them. However, this law will not fix everything. Government still needs to run awareness campaigns so that citizens can learn about how to spot when trafficking is occurring and how to report it. It needs to ensure better coordination between various institutions so that all agencies are working in the same direction. It also needs to train law enforcement on trafficking, and make sure to give victims the safety and help they need.

The Bill shows that Namibia is responsive to its international obligations when it comes to implementing the right laws. The future will show if it can live up to these obligations when it comes to protecting victims in reality.

## FURTHER READINGS

### ON LIBYA:

“People for sale: Where lives are auctioned for \$400” by Nima Elbagir, Raja Razek, Alex Platt and Bryony Jones. CNN. <http://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>

“Sale of Migrants as Slaves in Libya Causes Outrage in Africa and Paris” by Nour Youssef, New York Times, November 19, 2017. <https://www.nytimes.com/2017/11/19/world/africa/libya-migrants-slavery.html>

### ON THE DEFINITION OF HUMAN TRAFFICKING:

“What is Human Trafficking.” United Nations Office on Drugs and Crime.

On the government’s performance in fighting trafficking:

“Trafficking in Persons Report: June 2017,” by the U.S. Department of State, June 2017. <https://www.state.gov/j/tip/rls/tiprpt/2017/>

### ON WOMEN AND CHILDREN AND GENERAL INFORMATION ON HUMAN TRAFFICKING IN NAMIBIA:

“A Baseline Assessment of Human Trafficking in Namibia: A Nationally Representative Qualitative Assessment” by the Ministry of Gender Equality and Child Welfare, 2009.

### ON NAMIBIA’S LAWS AGAINST TRAFFICKING:

The Legal Assistance Centre’s Namlex project explains all the laws that apply in Namibia for a wide variety of subject matters, and the appendix details our international treaties and agreements. This resource as well as the full text of all laws enacted since independence can be found at [www.lac.org.na](http://www.lac.org.na)

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## ABOUT THE AUTHOR

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## ABOUT DEMOCRACY REPORT

Democracy Report is a project of the IPPR which analyses and disseminates information relating to the legislative agenda of Namibia’s Parliament. The project aims to promote public participation in debates concerning the work of Parliament by publishing regular analyses of legislation and other issues before the National Assembly and the National Council. Democracy Report is funded by the Embassy of Finland.

## ABOUT THE IPPR

The Institute for Public Policy Research (IPPR) is a not-for-profit organisation with a mission to deliver independent, analytical, critical yet constructive research on social, political and economic issues that affect development in Namibia. The IPPR was established in the belief that development is best promoted through free and critical debate informed by quality research.



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