

# Country Report: Namibia<sup>1</sup>



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## I. Introduction

### *Country Overview*

The Republic of Namibia is a presidential republic located in southern Africa; it borders South Africa to its south, Botswana to its east, and Angola to the north.<sup>2</sup> It gained independence from South Africa on March 21, 1990, following a protracted guerrilla war of independence.<sup>3</sup>

The Namibian economy depends heavily upon the extraction and processing of mineral deposits, zinc, gold, copper, and diamonds.<sup>4</sup> Once the Chinese-owned Husab mine reaches full production capacity, Namibia is expected to become the world's second-largest producer of uranium.<sup>5</sup>

Over half of Namibia's population resides in rural areas; where internal migration occurs, it generally flows from the non-agricultural north to the agriculture, mining, and manufacturing-heavy regions of the center and the south.<sup>6</sup> Cross-border trade and temporary migration is common between Namibia, Angola, Zambia, Zimbabwe, and Botswana.<sup>7</sup>

Namibia has been governed by the Marxist South-West Africa People's Organization (SWAPO) since the country won independence in 1990, though SWAPO has since abandoned much of its Marxist ideology.<sup>8</sup> In 2014, Prime Minister Hage Geingob was elected president, replacing Hifikepunye Pohamba who stepped down after serving two terms.<sup>9</sup>

Namibia is a member of the United Nations, the Southern African Development Community, and the African Union.

### *Trafficking in Persons ("TIP") Context*

According to the U.S. Department of State's 2016 Trafficking in Persons Report (TIP Report), is a "source and destination country for children, and to a lesser extent women, subjected to forced labor and sex trafficking."<sup>10</sup> For this and other reasons, Namibia has been classified by the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (J/TIP) as a Tier 2 country, meaning

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<sup>2</sup> *Namibia*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/wa.html> (last visited July 22, 2017) [hereinafter *Namibia*, CIA WORLD FACTBOOK].

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

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

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

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

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

<sup>10</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 279, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2016) [hereinafter U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016].

that does not fully meet the Trafficking Victims Protection Act’s minimum standards, but is making significant efforts to do so. Namibia’s Tier 2 status is an upgrade, given that it had been a Tier 2 Watchlist country between 2012 and 2015.<sup>11</sup>

In terms of internal trafficking and forced labor, Namibian children “are subjected to forced labor in agriculture, cattle herding, and domestic service, and to sex trafficking in Windhoek and Walvis Bay . . . San and Zemba children are particularly vulnerable to forced labor in farms or in homes.”<sup>12</sup> The international trafficking of children may occur in the fishing sector and organized street vending in urban areas; furthermore, Angolan children “may be brought to Namibia for forced labor in cattle herding.”<sup>13</sup> Furthermore, there are reports that forced labor involving foreign and Namibian adults and children may occur in Chinese-owned retail, construction, and fishing operations.<sup>14</sup>

Furthermore, the United Nations Human Rights Committee has expressed concern that women and children are trafficked within Namibia for the purpose of forced labor and sexual exploitation, including forced prostitution. The Human Rights Committee also notes its concern at the lack of specific anti-trafficking legislation and the lack of prosecutions for TIP and TIP-related offenses.<sup>15</sup>

In 2015, the government conducted seven trafficking investigations, five for sex trafficking and two for forced labor. In 2015, Namibia secured its first conviction under the national Prevention of Organised Crime Act of 2009. The court sentenced the trafficker to 13 years in prison.<sup>16</sup>

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<sup>11</sup> *Id.* at 280.

<sup>12</sup> *Id.* at 279-80.

<sup>13</sup> *Id.* at 280.

<sup>14</sup> *Id.*

<sup>15</sup> United Nations Human Rights Committee, Concluding Observations on the Second Report of Namibia § 6, U.N. Doc. CCPR/C/NAM/CO/2, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NAM&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NAM&Lang=EN) (navigate to Reporting Cycle II, then Concluding Observations, to download a copy of the document) (last visited July 31, 2017).

<sup>16</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016, *supra* note 10, at 280.

## II. Institution Mapping

### *Government Structure*

Namibia is a secular and democratic state; the supreme law of the land is the Constitution of 1990 (Constitution). The government is divided into three organs: (1) the Executive; (2) the Legislative; and (3) the Judiciary. Although Namibia is a unitary state, it is divided into 14 administrative regions.<sup>17</sup> Regions and localities have locally elected governments that have the power to legislate and enforce local law.<sup>18</sup>

#### Executive

The Executive Branch is responsible for ensuring that the laws of the National Assembly and National Council are enforced. The Executive powers of Namibia vest with the President and the Cabinet.

The President is the head of State and government, and is elected in a national election every five years by absolute majority popular vote.<sup>19</sup>

The Cabinet consists of the President, the Prime Minister, Deputy Prime Minister, and Ministers appointed by the President. The Prime Minister is the Chief Advisor to the President and the overall coordinator of the Government Offices, Ministries, and Agencies. The Cabinet is appointed by the President from among members of the National Assembly.<sup>20</sup>

#### Legislative

Namibia has a bicameral Parliament that consists of the National Assembly and the National Council.

The National Assembly has 96 members directly elected in multi-seat constituencies by proportional representation vote, and eight nonvoting members appointed by the President.<sup>21</sup> The National Council consists of 42 members indirectly elected by the regional councils.

The National Council primarily reviews legislation passed and referred by the National Assembly. Both groups serve five-year terms.<sup>22</sup>

#### Judicial

The Namibian judiciary is comprised of the Supreme Court, the High Court, and the Lower Courts.<sup>23</sup>

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<sup>17</sup> *Namibia*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/wa.html> (last visited July 22, 2017) [hereinafter *Namibia*, CIA WORLD FACTBOOK].

<sup>18</sup> See generally Hilya Nadago, *UPDATE: Researching Namibian Law and the Namibian Legal System*, GLOBALEX (Jan. 2013), available at <http://www.nyulawglobal.org/globalex/Namibia1.html> (last visited July 31, 2017).

<sup>19</sup> *Namibia*, CIA WORLD FACTBOOK, *supra* note 17.

<sup>20</sup> See Nadago, *supra* note 18.

<sup>21</sup> *Id.*

<sup>22</sup> CIA WORLD FACTBOOK, *supra* note 17.

<sup>23</sup> *Namibia*, Constitution of 1990, art. 78, available at [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017) [hereinafter *NAMIBIA CONST.*].

The Supreme Court consists of the chief justice and at least three judges in quorum sessions. It is The Supreme Court is Namibia's highest court, and has jurisdiction to hear Constitutional appeals, other appeals from the High Court, and any other matters that have been referred to it by the Attorney General or authorized by a parliamentary act.<sup>24</sup> Because Namibia's justice system follows the principle of *stare decisis*, Supreme Court decisions are binding unless overruled by a subsequent decision or an act of parliament.<sup>25</sup>

The High Court exercises original jurisdiction over civil and criminal prosecutions, as well as Constitutional cases. The High Court may also hear appeals from the lower courts of the country.<sup>26</sup>

That Lower Courts should exist is established by the Constitution, but these courts themselves are creatures of statute—which is to say that the legislature provides for their establishment.<sup>27</sup> The Lower Courts include magistrate courts, which hear the bulk of Namibia's court cases; the Labour Courts, which generally deal with violations of the 1992 Labor Act; and the Community Courts, which apply customary law.<sup>28</sup> It should be noted that in 2007, Namibia promulgated a new Labor Act which did away with district-level labor courts, effectively turning the Labor Courts into courts of appeal.<sup>29</sup>

### ***Criminal Justice***

Under the Criminal Procedure Act of 2004, the authority to institute and conduct a criminal prosecution for any offence vests in the State.<sup>30</sup> Criminal actions must be commenced by the Prosecutor General in the name of the Republic of Namibia, although the right of private prosecution still exists where the Prosecutor General declines to prosecute.<sup>31</sup>

The Namibian Police Force (NamPol), which operates under the authority of the Ministry of Safety and Security is responsible for internal security.<sup>32</sup> The Criminal Investigations Directorate is responsible for conducting criminal investigations; it is comprised of various sub-divisions, including the Serious Crime Investigations Unit and the Women and Child Protection Unit.<sup>33</sup>

The Namibian Defense Force, which operates under the Ministry of Defense, provides supplemental assistance to NamPol in response to some natural disasters.<sup>34</sup>

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<sup>24</sup> See Nadago, *supra* note 18.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Criminal Procedure Act, No. 25 of 2004, §§ 5-6, *available at* [https://www.unodc.org/res/cld/document/nam/2004/criminal\\_procedure\\_act\\_2004\\_html/225\\_act\\_25\\_of\\_2004.pdf](https://www.unodc.org/res/cld/document/nam/2004/criminal_procedure_act_2004_html/225_act_25_of_2004.pdf) (last visited July 31, 2017).

<sup>31</sup> *Id.*

<sup>32</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2015 256, *available at* <https://www.state.gov/documents/organization/245365.pdf> (last visited July 31, 2017).

<sup>33</sup> *Namibian Police Force*, THE REPUBLIC OF NAMIBIA, <http://www.nampol.gov.na/crime-investigations> (last visited July 31, 2017).

<sup>34</sup> U.S. DEP'T OF STATE, NAMIBIA 2016 HUMAN RIGHTS REPORT 11, <https://www.state.gov/documents/organization/265496.pdf> (last visited July 31, 2017).

## ***Anti-Corruption and Ethics***

Namibian law provides criminal penalties for official corruption. According to the U.S. Department of State's 2016 Human Rights Report:

The [Anti-Corruption Commission (ACC)], Prosecutor General's Office, NamPol, Auditor General's Office, Financial Investigative Center at the Bank of Namibia, Public Service Commission, and Ombudsman's Office are responsible for combating corruption. The ACC receives and investigates corruption complaints, often from the public. The Financial Investigative Center investigates and reports suspicious money transfers. The Public Service Commission investigates corruption complaints in the civil service hiring process. The Auditor General's Office also investigates corruption and refers cases to the Prosecutor General's Office and NamPol for further investigation and criminal prosecution where appropriate. These organizations actively collaborated with civil society, conducted thorough investigations, and operated both effectively and independently.<sup>35</sup>

## ***Traditional Justice Systems***

The Community Courts Act provides, pursuant to Constitutional mandate, for the establishment of community courts that apply customary law.<sup>36</sup> Community courts do not hand down written decisions.<sup>37</sup>

## ***Anti-Trafficking Institutions***

### National Human Trafficking Committee

The government of Namibia has established a national committee to combat human trafficking, which is chaired by the Deputy Prime Minister.<sup>38</sup> The Permanent Secretary for International Relations and Cooperation (MIRCO) chairs the technical (sub)-committee of this body, which held its first meeting with representatives from the police, the Office of the Prosecutor General, the Ministry of Labor, the Ministry of Health and Social Services, MIRCO, the Ministry of Gender Equality and Child Welfare, and the Ministry of Home Affairs and Immigration.<sup>39</sup> This technical committee successfully drafted a new national action plan to combat TIP during the reporting year; however, ABA ROLI has been unable to locate a copy of this document for review.<sup>40</sup>

### Ministry of Labor and Social Welfare

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<sup>35</sup> *Id.*

<sup>36</sup> See NAMIBIA CONST., *supra* note 23, at art. 66; Community Courts Act, Act No. 10 of 2003, *available at* [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=223544](http://www.wipo.int/wipolex/en/text.jsp?file_id=223544) (last visited July 31, 2017).

<sup>37</sup> Nadago, *supra* note 18.

<sup>38</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 279, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2016) [hereinafter U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016].

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

The Ministry of Labor and Social Welfare's labor and occupational health and safety inspectors are responsible for enforcing anti-child labor laws.<sup>41</sup>

### Ministry of Gender Equality and Child Welfare

The Ministry of Gender Equality and Child Welfare (MGECW) is responsible for ensuring gender equality and equitable socio-economic development of women and men alike, as well as children's wellbeing.<sup>42</sup> It runs a number of programs and services to facilitate these goals, but with respect to TIP in particular MGECW has created and disseminated gender-based violence curricula for police and other government officials, which include TIP-related training.<sup>43</sup>

### Gender-Based Violence Protection Units (GBVPU)

NamPol's specialized GBVPUs have a social worker attached to them, and are mandated to provide multi-sectoral responses to sexual abuse, gender-based violence, and other forms of exploitation.<sup>44</sup> These units refer victims of all crimes to temporary shelter facilities, where they can receive medical assistance; these facilities offer psycho-social, legal, and medical care to crime victims.<sup>45</sup> While their mandate does not necessarily specifically include TIP, the GBVPUs are likely well-placed to provide much-needed assistance to victims of TIP.

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<sup>41</sup> *Id.* at 281.

<sup>42</sup> *About Us*, Ministry of Gender Equality and Child Welfare, <http://www.mgecw.gov.na/about-us> (last visited July 31, 2017).

<sup>43</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016, *supra* note 38, at 280.

<sup>44</sup> UNICEF Annual Report: Namibia (2016) 50, *available at* [https://www.unicef.org/about/annualreport/files/Namibia\\_2016\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Namibia_2016_COAR.pdf) (last visited July 31, 2017).

<sup>45</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016, *supra* note 38, at 280.

### III. National Anti-Trafficking in Persons Legal and Institutional Framework

#### *Anti-TIP Legal Framework*

##### Domestic Statutory Authority

The Namibian Constitution prohibits slavery and forced labor.<sup>46</sup>

The government of Namibia has reportedly drafted a National Human Trafficking Bill, but as of the end of the reporting period for the U.S. Department of State's 2016 Trafficking in Persons Report (TIP Report), it was still pending enactment.<sup>47</sup> ABA ROLI has been unable to locate a publicly-available copy of this bill to review its provisions.

The Prevention of Organized Crime Act (POCA), however, does criminalize TIP. The law defines TIP as:

[T]he recruitment, 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, and includes any attempt, participation or organising of any of these actions. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>48</sup>

POCA also criminalizes migrant smuggling, defining it as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person who is not (a) a national or a permanent resident of Namibia; or (b) lawfully resident in Namibia, into Namibia or enabling such a person to remain in Namibia without complying with the law of Namibia.”<sup>49</sup> However, POCA does not include any distinction between trafficking in children and trafficking in adults.

Participating in, or aiding and abetting TIP carries penalties of up to 50 years' imprisonment, or a fine not exceeding N\$1 million; participating in, or aiding and abetting migrant smuggling carries penalties of up to 25 years' imprisonment, or a fine not exceeding N\$500,000.<sup>50</sup>

The Child Care and Protection Act (CCPA) explicitly criminalizes the trafficking of children,<sup>51</sup> defined

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<sup>46</sup> Namibia, Constitution of 1990, art. 9, *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017).

<sup>47</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 279, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2016) [hereinafter U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016].

<sup>48</sup> Prevention of Organised Crime Act, No. 29 of 2004, § 1, *available at* [https://laws.parliament.na/cms\\_documents/prevention-of-organised-crime-3a3a391a4a.pdf](https://laws.parliament.na/cms_documents/prevention-of-organised-crime-3a3a391a4a.pdf) (last visited July 31, 2017) [hereinafter POCA].

<sup>49</sup> *Id.* at § 1.

<sup>50</sup> *Id.* at §§ 15-16.

<sup>51</sup> Child Care and Protection Act, No. 3 of 2015, § 200, *available at*

as follows: “to deliver, recruit, transport, transfer, harbour, adopt, sell, exchange, lease or receive a child within or across the borders of Namibia for the purpose of exploitation.”<sup>52</sup> Exploitation includes (a) prostitution or any form of sexual exploitation; (b) forced labor or services, prohibited child labor, or other economic exploitation; (c) slavery or practices similar to slavery, including debt bondage or a forced marriage; (d) servitude; (e) the removal of any body parts; or (f) the impregnation of a female against her will for the purpose of selling the child when the child is born.

The CCPA criminalizes various ways in which individuals may aid or abet the trafficking of children, including through the leasing or subleasing of rooms or buildings in order to facilitate trafficking, advertising or distributing information that may facilitate the trafficking of children, financing or organizing the trafficking of children, intentionally or recklessly destroying or tampering with travel documents in order to facilitate or promote the trafficking of children, or intentionally benefitting from the services of a child trafficking victim.<sup>53</sup>

Persons convicting of the trafficking of a child may be liable for a fine not exceeding N\$1 million, imprisonment not to exceed 20 years, or both.<sup>54</sup>

Unlike POCA, the CCPA provides a number of protections for victims. The law provides that (1) victims have a right to privacy; (2) criminal prosecutions may not be instituted against child victims of trafficking for entering Namibia illegally, or assisting another person in illegally entering Namibia, for possessing falsified documents, or for being involved in illegal activity; (3) victims must be informed of their rights; (4) the government must arrange for medical and psychological services for victims; (5) the government must assist victims in finding employment; and (6) the government must provide legal assistance in helping the child apply for asylum.

The CCPA does not address registration of child trafficking victims and does not create reintegration programs.<sup>55</sup>

### Domestic Policies and Action Plans

Namibia’s technical committee to combat human trafficking has reportedly drafted a new National Action Plan to combat TIP; however, ABA ROLI has not identified a publicly-available copy of this document for review.

Aside from this, a number of policies and action plans exist to combat TIP in various forms. For example, the National Plan of Action on Gender-Based Violence (2012-2016) addresses child marriage, forced marriage, domestic violence, and trafficking in persons;<sup>56</sup> the National Development Plan IV addresses child protection and concerns related to TIP; and the Decent Work Country

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<http://www.lac.org.na/laws/2015/5744.pdf> (last visited July 31, 2017) [hereinafter CCPA].

<sup>52</sup> *Id.*

<sup>53</sup> *See id.* at § 203.

<sup>54</sup> *Id.* at § 202(a).

<sup>55</sup> *Id.* at §§ 213, 224.

<sup>56</sup> MINISTRY OF GENDER EQUALITY AND CHILD WELFARE, NATIONAL PLAN OF ACTION ON GENDER-BASED VIOLENCE 2012-2016 §§ 2.1, 2.3 (2011), *available at* [http://www.na.undp.org/content/dam/namibia/docs/womenempowerment/undp\\_na\\_womenempowernt\\_National%20Plan%20of%20Action%20on%20GBV.pdf](http://www.na.undp.org/content/dam/namibia/docs/womenempowerment/undp_na_womenempowernt_National%20Plan%20of%20Action%20on%20GBV.pdf) (last visited July 31, 2017) [hereinafter MGECW, GBV ACTION PLAN].

Program includes provisions on elimination of forced labor and child labor.<sup>57</sup>

Both the POCA 2004 and the CCPB also cover ancillary offenses such as aiding, abetting, or attempts to TIP.<sup>58</sup> Neither law addresses inter-agency, multi-sectoral, regional, or international cooperation to address TIP.

ABA ROLI researchers did not identify any measures aimed at preventing TIP in the supply chain.

### International Agreements

Namibia has ratified or acceded to a number of international agreements relevant to addressing TIP, including:

- the UN Convention against Transnational Organized Crime (UNTOC);
- the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime;
- the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography;<sup>59</sup> and
- International Labor Organization (ILO) Conventions:
  - No. 29 (concerning Forced or Compulsory Labor);
  - No. 105 (concerning the Abolition of Forced Labor);
  - No. 138 (concerning Minimum Age for Admission to Employment); and
  - No. 192 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor).<sup>60</sup>

### ***Anti-TIP Institutional Framework***

Namibia has several institutions dedicated to gender-based violence and to the wellbeing of children. The Ministry of Gender Equality and Child Welfare (MGECW) is responsible for implementing Namibia's National Plan of Action on Gender-Based Violence.<sup>61</sup> In 2009, MGECW and other stakeholders launched a national media campaign on Zero Tolerance for Gender-Based Violence, which included materials that encouraged the reporting of human trafficking.<sup>62</sup> MGECW has also conducted trainings for police and government officials to help combat gender-based violence, and has developed standard operating procedures for shelters, though the government only has six operational shelters in Namibia's 14 regions.<sup>63</sup>

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<sup>57</sup> *Child Labor and Forced Labor Reports: Namibia*, U.S. DEP'T OF LAB., BUREAU OF INT'L LAB. AFF., <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/namibia> (last visited July 31, 2017).

<sup>58</sup> POCA, *supra* note 48, at § 15; CCPA, *supra* note 51, at Schedule 4.

<sup>59</sup> See *Multilateral Treaties Deposited with the Secretary-General*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=\\_en](https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_en) (last visited July 22, 2017) (select "Namibia" in the drop-down Participant list to access a full list of international treaties and agreements deposited with the U.N. Secretary-General that Namibia has ratified or acceded to).

<sup>60</sup> *Ratifications for Namibia*, INT'L LABOUR ORG., [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103282](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103282) (last visited July 31, 2017).

<sup>61</sup> MGECW, GBV ACTION PLAN, *supra* note 56.

<sup>62</sup> *Id.*

<sup>63</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016, *supra* note 63, at 280.

The U.S. Department of State's 2016 TIP Report notes that in partnership with an international donor, the Namibian government created a multi-sector steering committee and signed a memorandum of understanding in preparation for a project to strengthen inter-ministerial coordination to respond to trafficking cases and to launch a public awareness campaign to inform Namibians about trafficking.<sup>64</sup> In April 2016, the government and International Organization for Migration launched a three-year initiative to combat TIP. The project is funded by the United States Department of State;<sup>65</sup> ABA ROLI has been unable to confirm whether these projects are identical.

ABA ROLI was unable to identify a national TIP monitoring framework.

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<sup>64</sup> *Id.* at 281.

<sup>65</sup> *IOM, Namibia Launch Initiative to Combat Human Trafficking*, INTERNATIONAL ORGANIZATION FOR MIGRATION, (Apr. 12, 2016), <https://www.iom.int/news/iom-namibia-launch-initiative-combat-human-trafficking> (last visited July 31, 2017).

## IV. Justice System

### *Access to Justice*

#### Equality and Non-Discrimination Provisions

The Constitution of Namibia provides that all persons shall be equal before the law, and that discrimination may not occur on the grounds of sex, race, color, ethnic origin, religion, creed, or social or economic status.<sup>66</sup>

ABA ROLI researchers did not identify any other laws restricting legal standing for women, minorities, foreign citizens, or stateless persons.

#### Access to Legal Aid

ABA ROLI researchers did not identify any laws on legal aid for indigent persons.

The United Nations Human Right Committee cited concern that access to free legal aid in Namibia is limited to persons with a monthly income below the low amount of N\$2,000, and that legal aid provision has been further impeded due to budgetary constraints.<sup>67</sup>

### *Criminal Law and Procedure*

ABA ROLI has not identified whether Namibia has TIP-specific court, investigative, or prosecutorial units, nor has it identified any publicly-available standard operating procedures (SOPs) for similar units.

With respect to investigative units, the Namibian Police Force (NamPol) does have Serious Crime Investigations Units, Women and Child Protection Units, and Gender Based Violence Protection Units, all of whose mandates may cover TIP investigations.<sup>68</sup>

With respect to court systems, it does appear that some Namibian courts have taken efforts to become more victim-friendly. According to the U.S. Department of State Human Rights Report of 2016, some magistrate courts have provided special courtrooms with a cubicle constructed of one-way glass, as well as child-friendly waiting rooms, to protect vulnerable witnesses from having to testify in open court.<sup>69</sup>

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<sup>66</sup> Namibia, Constitution of 1990, art. 10, *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017) [hereinafter NAMIBIA CONST.].

<sup>67</sup> United Nations Human Rights Committee, Concluding Observations on the Second Report of Namibia § 31, U.N. Doc. CCPR/C/NAM/CO/2, *available at* [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NAM&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NAM&Lang=EN) (navigate to Reporting Cycle II, then Concluding Observations, to download a copy of the document) (last visited July 31, 2017).

<sup>68</sup> See *Namibian Police Force*, THE REPUBLIC OF NAMIBIA, <http://www.nampol.gov.na/crime-investigations> (last visited July 31, 2017); UNICEF ANNUAL REPORT: NAMIBIA (2016) 50, *available at* [https://www.unicef.org/about/annualreport/files/Namibia\\_2016\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Namibia_2016_COAR.pdf) (last visited July 31, 2017).

<sup>69</sup> U.S. DEP'T OF STATE, NAMIBIA 2016 HUMAN RIGHTS REPORT 13,

## ***Extradition***

The Extradition Act of 1996 allows for the extradition of persons upon the request of another state. However, an extradition agreement must be in place for such extraditions to occur.<sup>70</sup>

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<https://www.state.gov/documents/organization/265496.pdf> (last visited July 31, 2017).

<sup>70</sup> Extradition Act, No. 11 of 1996, § 2, *available at* [https://laws.parliament.na/cms\\_documents/extradition-2c1ab7b91f.pdf](https://laws.parliament.na/cms_documents/extradition-2c1ab7b91f.pdf) (last visited July 31, 2017).

## V. Economic System

### *Economic and Financial Crimes*

#### Money Laundering

Money laundering is prohibited by a number of laws in Namibia. These include the Financial Intelligence Act and the Prevention of Organized Crime Act (POCA).<sup>71</sup>

POCA's First Schedule lays out a list of predicate offenses for money laundering; it includes the stealing of children, fraud, and any other offenses punishable by over 12 months' imprisonment, which would include TIP and migrant smuggling.<sup>72</sup>

The Financial Intelligence Act defines money laundering as the direct or indirect engagement in transactions that involve the proceeds of unlawful activity, acquiring, possessing, using, or transporting to or from Namibia the proceeds of such activity; and concealing, disguising, or impeding the establishment of the true nature, origin, location, movement, or rights with respect to the proceeds of such activity.<sup>73</sup>

#### Financial Fraud

ABA ROLI has been unable to locate publicly-available copies of Namibia's laws criminalizing financial fraud to determine how they define, and to what extent they punish, the crime.

#### Forgery & Counterfeiting

The Prevention of Counterfeiting of Currency Act generally prohibits currency counterfeiting.<sup>74</sup> The Act criminalizes the counterfeiting of coin, the forgery or alteration of bank notes, knowingly uttering counterfeit or forged currency, and importing or exporting such currency from Namibia.<sup>75</sup>

Although this law predates Namibian independence, it appears to still be good law in the country.

#### Terrorist Financing

The Prevention and Combatting of Terrorist Activities Act of 2012 makes it a crime to deal with, enter into or facilitate any transaction or perform any other act in connection with funds connected with or owned by individuals, entities and other groups associated with certain individuals and entities

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<sup>71</sup> See Financial Intelligence Act, No. 13 of 2012, § 39, available at <https://www.fic.na/uploads/Acts/Financial%20Intelligence%20Act/Financial%20Intelligence%20Act%2013%20of%202012.pdf> (last visited July 31, 2017) [hereinafter FIA]; Prevention of Organised Crime Act, No. 29 of 2004, §§ 4-6, available at [https://laws.parliament.na/cms\\_documents/prevention-of-organised-crime-3a3a391a4a.pdf](https://laws.parliament.na/cms_documents/prevention-of-organised-crime-3a3a391a4a.pdf) (last visited July 31, 2017) [hereinafter POCA].

<sup>72</sup> POCA, *supra* note 71, at §§ 4-6, Schedule 1.

<sup>73</sup> FIA, *supra* note 71, at § 1.

<sup>74</sup> Prevention of Counterfeiting of Currency Act, No. 16 of 1965, available at <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/1a/1a6e664b-0d0a-4afd-9394-0614e38fc6f0.pdf> (last visited July 31, 2017).

<sup>75</sup> *Id.* at § 2.

listed by the United Nations.<sup>76</sup> The United Nations lists include designated terrorists.<sup>77</sup>

### ***Regulation and Monitoring of International Financial Transactions***

Namibian financial institutions are required to maintain anti-money laundering and counter-terrorist financing programs designed to detect and prevent money laundering.<sup>78</sup> Such programs must include procedures for identifying a financial institution's customers; without making such identification, financial institutions in Namibia are barred from establishing business relationships with clients.<sup>79</sup>

The Financial Intelligence Center (FIC) is the agency responsible for implementing anti-money laundering and anti-terrorist financing laws in Namibia. Financial transaction monitoring programs must include procedures for identifying and reporting suspicious transactions and suspicious activities to the FIC.<sup>80</sup> While the government does not provide specific guidance on TIP red flags, the FIC has released a guidance note that lays out specific indicators of suspicious transactions, which may indicate TIP amongst other crimes.<sup>81</sup> These red flags may include:

- A client always being accompanied by unknown person(s), and being watched during their transactions;
- A client appears nervous or in a hurry;
- A client produces seemingly false identification or identification that appears to be false, altered or inaccurate;
- All identification presented is foreign; and/or
- Individuals involved in cash transactions share addresses.<sup>82</sup>

### ***Asset Freezing and Forfeiture***

ABA ROLI is unable to identify any laws providing for asset forfeiture as a sanction for TIP or TIP-related offenses, and were not able to identify any laws providing for asset freezing during criminal, civil, or administrative proceeds.

### ***Remittances***

ABA ROLI has not identified any laws that specifically govern remittances; however, the Namibia National Payment System Vision of 2015 prioritizes improvements to Namibia's remittances market.<sup>83</sup> To this end, Namibia intends to develop a sound legal framework for remittances based

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<sup>76</sup> See generally Prevention and Combating of Terrorist Activities Act, No. 12 of 2012 §§ 3, 21, <http://www.lac.org.na/laws/2012/5095.pdf> (last visited July 31, 2017).

<sup>77</sup> *Id.* at §§ 3, 21.

<sup>78</sup> See generally FIA, *supra* note 71.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> FINANCIAL INTELLIGENCE CENTRE, GUIDANCE NOTE ON SUSPICIOUS TRANSACTION REPORTS, SUSPICIOUS ACTIVITY REPORTS, CASH TRANSACTION REPORTS AND ELECTRONIC FUNDS TRANSFERS, No. 6 of 2015, *available at* <https://www.fic.na/uploads/Publications/Guidance%20Notes/Guidance%20note%206%20of%202015%20on%20reporting%20STRs%20SARs%20CTRs%20%20and%20EFTs.pdf> (last visited July 31, 2017).

<sup>82</sup> *Id.*

<sup>83</sup> Bank of Namibia et al, Namibia National Payment System Vision 2015 5 (2015), *available at* <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/27/27a78182-70a5-42bb-ad4f->

upon the principles developed by the Bank for International Settlement and the World Bank, participate in Southern African Development Community (SADC) remittance initiatives, “with a view to achieve low cost[,] safe cross border remittance services.”<sup>84</sup>

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97ad2a155e59.pdf (last visited July 31, 2017).

<sup>84</sup> *Id.* at 10.

## VI. Corporations

### *Liability of Legal Persons for Violations of Law*

Namibian law generally creates criminal liability for legal persons.<sup>85</sup>

Natural persons acting in an official capacity may be held liable for violations of other laws. For example, the Financial Intelligence Act provides that directors, controllers, or partners of legal entities, or individuals who are responsible for the management of the entity's affairs, may be held liable for the offenses of a company under the Act, unless they can prove that the offense was committed "without his or her consent or connivance and that he or she exercised such diligence to prevent the commission of the offense as he or she ought to have exercised."<sup>86</sup> Such individuals may be prosecuted for offenses under the Financial Intelligence Act even if a legal person has not been convicted; nor does the prosecution of an individual limit the liability of the entity.<sup>87</sup>

To the extent that the Prevention of Organized Crime Act (POCA) defines an "enterprise" broadly to include "any individual, partnership, corporation, association, or other person or legal entity, and any union or group of individuals associated in fact",<sup>88</sup> entities may be able to be held liable for TIP offenses. However, POCA does not explicitly state that this is the case.

Under the Child Care and Protection Act (CCPA), electronic communications service providers operating in Namibia may be held liable for an offense if they are or become aware that their systems are being used for the storage or transmission of information related to the trafficking of children.<sup>89</sup> However, it is not clear whether the CCPA creates liability for the providing entity or its officers.<sup>90</sup>

### *Compliance with Laws on Incorporation*

ABA ROLI has not determined what oversight mechanisms exist to secure compliance with Namibia's laws on incorporation, which are laid out in the Companies Act.<sup>91</sup>

### *Corporate Social Responsibility Initiatives*

ABA ROLI has not identified any national laws or policies that encourage or require Namibian

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<sup>85</sup> Criminal Procedure Act, No. 51 of 1977, *available at* [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=85750&p\\_classification=01.04](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85750&p_classification=01.04) (last visited July 31, 2017).

<sup>86</sup> Financial Intelligence Act, No. 13 of 2012, § 65(1), *available at* <https://www.fic.na/uploads/Acts/Financial%20Intelligence%20Act/Financial%20Intelligence%20Act%2013%20of%202012.pdf> (last visited July 31, 2017).

<sup>87</sup> *Id.* at §§ 65(2)-(4).

<sup>88</sup> Prevention of Organised Crime Act, No. 29 of 2004, § 1(d), *available at* [https://laws.parliament.na/cms\\_documents/prevention-of-organised-crime-3a3a391a4a.pdf](https://laws.parliament.na/cms_documents/prevention-of-organised-crime-3a3a391a4a.pdf) (last visited July 31, 2017) [hereinafter POCA].

<sup>89</sup> Child Care and Protection Act, No. 3 of 2015, § 203(2), *available at* <http://www.lac.org.na/laws/2015/5744.pdf> (last visited July 31, 2017) [hereinafter CCPA].

<sup>90</sup> *See id.* at §§ 203(3)-(4).

<sup>91</sup> Companies Act, No. 28 of 2004, §§ 64-67, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/na/na012en.pdf> (last visited July 31, 2017).

businesses or entities that do business in Namibia to engage in corporate social responsibility initiatives.

### ***Supply Chain Transparency and Accountability***

ABA ROLI has not identified any national laws or policies that encourage or require the monitoring of supply chains for Namibian businesses; nor has ABA ROLI identified any national laws or policies that prohibit the government from engaging in transactions with entities that are known or suspected to use TIP or TIP-related practices in their supply chains.

### ***Contract Law***

ABA ROLI has been unable to review any publicly-available specific provisions of statutory law that address when contracts may be rendered void or voidable, or specific case law that discusses the issue. However, to the extent that Namibia's civil law systems derive from the English law,<sup>92</sup> it is possible that general common law principles relating to contract voidness or voidability exist within Namibian jurisprudence.

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<sup>92</sup> Hilya Nadago, *UPDATE: Researching Namibian Law and the Namibian Legal System*, GLOBALEX (Jan. 2013), available at <http://www.nyulawglobal.org/globalex/Namibia1.html> (last visited July 31, 2017).

## VII. Natural Resources, Environment, and Property

### *Natural Resource Extraction Laws*

#### Logging

The Namibian logging industry is overseen by the Ministry of Agriculture, Water and Forestry, under the authority of the Forest Act.<sup>93</sup> A number of licenses may be procured under the Forest Act, including licenses to harvest, graze or carry on agricultural activities, carry on mining activities, or construct roads or buildings.<sup>94</sup> Licensing decisions are made by the Minister for Agriculture, Water and Forests, and granted only when royalties have been paid pursuant to regulations imposed by the latter Minister and the Minister of Finance.<sup>95</sup>

Harvest licenses may only be granted for commercial activities that fall within the scope of any applicable forestry management plans,<sup>96</sup> which are drawn up by the Forestry Directorate in consultation with local and area councils where the relevant classified forests are situated.<sup>97</sup> At minimum, these management plans must note the maximum quantity of forest produce that may be harvested.<sup>98</sup>

Harvest licenses may be suspended or cancelled if a forest officer has reasonable grounds to believe that any provision of the Forestry Act or the license is occurring or about to occur.<sup>99</sup> ABA ROLI has not been able to review any boilerplate or actual harvest licenses to determine whether they contain TIP or TIP-related provisions.

#### Fishing

The National Fishing Corporation of Namibia regulates Namibia's marine resources, and promotes the development of Namibia's fishing industry.<sup>100</sup> Other laws that regulate the Namibian fishing industry include the Marine Resources Act and its associated Regulations.<sup>101</sup>

The Marine Resources Act regulates harvest rights, fisheries agreements and fishing vessel licensing;

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<sup>93</sup> See Forest Act, 12 of 2001, *available at* [http://www.lac.org.na/laws/annoNAM/ENVIRONMENT%20\(2001\)%20-%20Forest%20Act%2012%20of%202001%20\(annotated\).pdf](http://www.lac.org.na/laws/annoNAM/ENVIRONMENT%20(2001)%20-%20Forest%20Act%2012%20of%202001%20(annotated).pdf) (last visited July 31, 2017).

<sup>94</sup> *Id.* at §§ 27-30.

<sup>95</sup> *Id.* at § 27(2).

<sup>96</sup> *Id.* at § 24(1).

<sup>97</sup> See *id.* at § 12.

<sup>98</sup> *Id.* at § 26.

<sup>99</sup> *Id.* at § 34(1).

<sup>100</sup> National Fishing Corporation of Namibia Act, No. 28 of 1991, at Preamble, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam2713.pdf> (last visited July 31, 2017).

<sup>101</sup> Marine Resources Act, No. 27 of 2000, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam44344.pdf> (last visited July 31, 2017); the Regulations Relating to the Exploitation of Marine Resources, No. 241 of 2001, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam44363.pdf> (last visited July 31, 2017); Marine Resources (Amendment) Act, No. 214 of 2015, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam154198.pdf> (last visited July 31, 2017).

it authorizes the Minister responsible for marine resources to set catch limits, amongst other regulations.<sup>102</sup> The Regulations contain more detailed licensing provisions relating to allowable gear, protected species, and modes of fishing;<sup>103</sup> however, they do not appear to have provisions relating to the use of TIP or TIP-related practices on board fishing vessels.

### Mining

Namibia's mining industry is overseen by the Mining Commissioner and the Minerals Ancillary Rights Commission, under the authority of the Minerals (Prospecting and Mining) Act (Minerals Act).<sup>104</sup> A number of other laws also regulate the mining industry, however, including the Environmental Management Act, the Environmental Impact Assessment Regulations, The Forest Act, and the Mines, Works and Minerals Ordinance.<sup>105</sup>

The Minerals Act provides for the issuance of mineral reconnaissance licenses, exploration and prospecting licenses, and mining operations licenses.<sup>106</sup> However, none of these licenses may be issued until the applicant has obtained an environmental clearance certificate, pursuant to the Environmental Impact Assessment Regulations.<sup>107</sup> The Act further provides that license-holders are only entitled to reconnoitre, explore and prospect, or mine the minerals or groups of minerals that are specified in their license; violations of the Minerals Act, or the terms of the license, may result in license revocation.<sup>108</sup>

ABA ROLI has not determined whether the laws and regulations listed above contain provisions regarding TIP or TIP-related practices; however, the Minerals Act provides that mining employers must provide safe working conditions for mine workers, and violations of this provision may result in liability both under the terms of the act and under Namibian common law.<sup>109</sup>

### Oil and Gas

Namibia's petroleum industry is overseen by the Minister for Mines and Energy and the Commission and Inspectorate of Petroleum Affairs, under the authority of the Petroleum (Exploration and Production) Act.<sup>110</sup> The Act establishes that licenses may be granted for the reconnaissance,

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<sup>102</sup> See Marine Resources Act, *supra* note 101, at §§ 32-43.

<sup>103</sup> Regulations Relating to the Exploitation of Marine Resources, *supra* note 101.

<sup>104</sup> Minerals (Prospecting and Mining) Act, No. 33 of 1992, *as amended by* Minerals (Prospecting and Mining) Amendment Act, No. 8 of 2008, *available at* <https://a-mla.org/masteract/22> (last visited July 31, 2017).

<sup>105</sup> See *Namibia, Mining Law 2017*, African Law & Business ch. 1, <https://www.africanlawbusiness.com/publications/mining-law/mining-law-2017/namibia/q-and-a> (last visited July 31, 2017).

<sup>106</sup> See *generally* Minerals (Prospecting and Mining) Act, *supra* note 104.

<sup>107</sup> *Namibia, Mining Law 2017*, *supra* note 105.

<sup>108</sup> See *generally* Minerals (Prospecting and Mining) Act, *supra* note 104.

<sup>109</sup> *Namibia, Mining Law 2017*, *supra* note 105; *see also* Minerals (Prospecting and Mining Act), *supra* note 104, at § 41(1)(e).

<sup>110</sup> Petroleum (Exploration and Production) Act, No. 2 of 1991, *available at* [http://www.lac.org.na/laws/annoNAM/MINING%20AND%20MINERALS%20\(1991\)%20-%20Petroleum%20\(Exploration%20and%20Production\)%20Act%20of%201991%20\(annotated\).pdf](http://www.lac.org.na/laws/annoNAM/MINING%20AND%20MINERALS%20(1991)%20-%20Petroleum%20(Exploration%20and%20Production)%20Act%20of%201991%20(annotated).pdf) (last visited July 31, 2017).

exploration, and production of petroleum and petroleum products, as well as the payment of royalties.<sup>111</sup>

Applicants may not obtain petroleum licenses without entering into a Petroleum Agreement with the state of Namibia. Companies that enter into such agreements guarantee that they will conduct operations in a manner “likely to conserve the natural resources of Namibia and protect the environment,” employ best practices to avoid environmental damage, and produce a Development Plan that addresses pollution prevention, waste treatment, the safeguarding of natural resources, and the “progressive reclamation and rehabilitation of lands disturbed by Petroleum Operations.”<sup>112</sup> Violations of these undertakings may be grounds for the revocation of the contract.

Similarly, applicants undertake to conduct all petroleum operations in accordance with good oilfield practices, in a proper and workmanlike manner, and in accordance with any work programs mandated by the terms of the Petroleum Act.<sup>113</sup> Furthermore, companies seeking oil and gas concessions must ensure that adequate compensation is provided for injury to workers or damage to property caused by their Petroleum Operations.<sup>114</sup> Beyond these provisions, the Model Petroleum Agreement does not mandate companies to take any further undertakings with respect to TIP or TIP-related practices.

### ***Environmental Regulation***

Namibia regulates air quality and emissions, drinking water quality, forest conservation, and wildlife conservation.<sup>115</sup>

ABA ROLI researchers did not identify any laws regulating hazardous waste management.

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<sup>111</sup> *Id.*

<sup>112</sup> Republic of Namibia, Model Petroleum Agreement, cl. 11.2, *available at* <http://www.resourcecontracts.org/contract/ocds-591adf-0557496060/download/pdf> (last visited July 31, 2017).

<sup>113</sup> *Id.* at cl. 12.1.

<sup>114</sup> *Id.* at cl. 12.7.

<sup>115</sup> Environmental Management Act, No. 7 of 2007, § 27, *available at* <http://www.lac.org.na/laws/pdf/environmentalact.pdf> (last visited July 31, 2017); MINISTRY OF AGRICULTURE, WATER AND RURAL DEVELOPMENT, NATIONAL WATER POLICY WHITE PAPER: POLICY FRAMEWORK FOR EQUITABLE, EFFICIENT, AND SUSTAINABLE WATER RESOURCES MANAGEMENT AND WATER SERVICES (Aug. 2000), *available at* <http://www.orangesenqurak.com/UserFiles/File/National%20Water%20Departments/Namibia/Water%20Policy%20for%20Namibia%20August%202000.pdf> (last visited July 31, 2017); MINISTRY OF AGRICULTURE, WATER AND FORESTRY, FOREST POLICY STATEMENT, <http://www.mawf.gov.na/documents/37726/186033/National+Forestry+Policy/59a90e4e-b01d-45c7-a99a-acdba399420d> (last visited July 31, 2017).

## ***Land Ownership and Eminent Domain***

Under the Constitution, all persons have the right to acquire, own, and dispose of all forms of immovable and movable property.<sup>116</sup> However, Parliament may by legislation prohibit or regulate the right of non-Namibian citizens to acquire property,<sup>117</sup> and the Constitution does provide that ownership interests over natural resources located in, on, or under the land vest in the State.<sup>118</sup>

The Constitution gives the State the right to expropriate property in the public interest subject to the payment of just compensation.<sup>119</sup>

ABA ROLI has not been able to identify any specific laws or policies that govern land grabbing. However, reports indicate that land grabbing is an increasing problem in Namibia, affecting rural families that rely on grazing and members of minority ethnic groups.<sup>120</sup>

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<sup>116</sup> Namibia, Constitution of 1990, art. 16, *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017).

<sup>117</sup> *Id.* at art. 16.

<sup>118</sup> *Id.* at art. 100.

<sup>119</sup> *Id.* at art. 16.

<sup>120</sup> See Willem Olendaal, *Elite Land Grabbing in Namibian Communal Areas and its Impact on Subsistence Farmers' Livelihoods*, Policy Brief 33 (Sep. 2011) at 5, *available at* <http://dSPACE.africaportal.org/jspui/bitstream/123456789/33230/1/PB%2033.pdf?1> (last visited July 31, 2017).

## VIII. Individual Rights

### ***Ratification of and Accession to International and Regional Human Rights Treaties***

Namibia has ratified or acceded to a number of international human rights treaties, including:

- the International Covenant on Civil and Political Rights (ICCPR) and both its Optional Protocols;
- the International Covenant on Economic, Social, and Cultural Rights (ICESCR);
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol;
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the Convention on the Rights of the Child (CRC); and both its Optional Protocols;
- the Convention on the Rights of Persons with Disabilities (CRPD); and
- the Convention and Protocol Relating to the Status of Refugees (Refugee Convention).<sup>121</sup>

Regional human rights treaties that Namibia has ratified or acceded to include:

- the African Charter on Human and Peoples' Rights (Banjul Charter);<sup>122</sup>
- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol);<sup>123</sup> and
- the African Charter on the Rights and Welfare of the Child.<sup>124</sup>

The Namibian Constitution provides that all rules of public international law that would otherwise be binding on Namibia form part of the Namibian law, unless otherwise provided by a Parliamentary act.<sup>125</sup> Treaties signed after the passage of the Constitution must be approved specifically by parliament.<sup>126</sup>

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<sup>121</sup> Multilateral Treaties Deposited with the Secretary-General, United Nations Treaty Collection, [https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=\\_en](https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_en) (last visited July 21, 2017) (select "Namibia" in the drop-down Participant list to access a full list of international treaties and agreements deposited with the U.N. Secretary-General that Namibia has ratified or acceded to).

<sup>122</sup> African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58.

<sup>123</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Sep. 13, 2000, 1 Afr. Hum. Rts. L.J. 40.

<sup>124</sup> African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49.

<sup>125</sup> Namibia, Constitution of 1990, art. 144, *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017) [hereinafter NAMIBIA CONST.].

<sup>126</sup> *Id.* at art. 32(3)(e); *see also* Onkmetse Tshosa, *The Status of International Law in Namibian National Law: A Critical Appraisal of the Constitutional Strategy*, 2 Namib. L.J. 3 (2010), *available at* [http://www.kas.de/upload/auslandshomepages/namibia/Namibia\\_Law\\_Journal/2010\\_1/NLJ\\_section\\_1.pdf](http://www.kas.de/upload/auslandshomepages/namibia/Namibia_Law_Journal/2010_1/NLJ_section_1.pdf) (last visited July 31, 2017).

## ***Legal Guarantees of Equality and Non-Discrimination***

The Namibian Constitution prohibits discrimination on the basis of sex, social origin, race or ethnicity, color, and religion: “No persons may be discriminated against on the grounds of sex, race, color, ethnic origin, religion creed or social or economic status.”<sup>127</sup>

Furthermore, the State must enact legislation to ensure the equality of women.<sup>128</sup> The Affirmative Action Employment Act of 1998 and Amendments Act of 2007 set up an affirmative action program for women. In government, in 2014, the ruling SWAPO party committed to filling half of its seats in parliament with women, and also committed to what it calls a “zebra system,” whereby if a minister is a woman, the deputy minister will be a man, and vice versa.<sup>129</sup>

## ***Rights of Foreigners and Stateless Individuals***

The Constitution provides for the granting of asylum to persons who reasonably fear persecution on the grounds of their political beliefs, race, religion, or membership in a particular social group.<sup>130</sup> The Namibia Refugees (Recognition and Control) Act outlines the rights and duties of recognized refugees and protected persons.<sup>131</sup>

Notably, this law does not grant refugees freedom of movement outside reception areas,<sup>132</sup> and despite the fact that the Refugee Convention is incorporated into the law by reference, a number of other rights that should be granted under the Refugee Convention (such as the right to employment on equal terms with other non-citizens) appear not to be granted under Namibia’s statute.

## ***State Human Rights Guarantees***

The Namibian Constitution provides for the following civil and political rights:

- the right to a fair trial;<sup>133</sup>
- the right to equality before the law;<sup>134</sup>
- the right to life;<sup>135</sup>
- the right to a legal identity;<sup>136</sup>
- the right to be free from from torture and/or cruel, inhuman, or degrading treatment or punishment;<sup>137</sup>

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<sup>127</sup> NAMIBIA CONST., *supra* note 125, at art. 10.

<sup>128</sup> *Id.*

<sup>129</sup> Alexander O’Riordan, *Namibia’s ‘zebra’ politics could make it stand out from the global herd*, THE GUARDIAN (July 8, 2014), <https://www.theguardian.com/global-development/2014/jul/08/namibia-gender-equality-zebra-politics>.

<sup>130</sup> NAMIBIA CONST., *supra* note 125, at art. 97.

<sup>131</sup> Namibia Refugees (Recognition and Control) Act, No. 41 of 1999, *available at* <http://www.refworld.org/docid/3ae6b59ac.html> (last visited July 31, 2017).

<sup>132</sup> *Id.* at § 20.

<sup>133</sup> NAMIBIA CONST., *supra* note 125, at art. 12.

<sup>134</sup> *Id.* at art. 10.

<sup>135</sup> *Id.* at Preamble.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at art. 8.

- the right to liberty;<sup>138</sup>
- the right to privacy;<sup>139</sup>
- the right to freedom of thought, conscience, and/or religion;<sup>140</sup>
- the right to free speech and expression;<sup>141</sup>
- the right to peaceful assembly and the freedom of association;<sup>142</sup> and
- the right to marry.<sup>143</sup>

The Constitution provides for the right to education for “all persons.”<sup>144</sup>

ABA ROLI researchers were not able to identify any laws providing for free or subsidized healthcare.

### ***State Human Rights Bodies***

The Constitution and the Ombudsman Act of 1990 require the establishment of a human rights ombudsman.<sup>145</sup> One of the mandates of the Ombudsman is to investigate allegations of breaches of human rights.<sup>146</sup> Article 25 of the Constitution states that:

Aggrieved person who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.<sup>147</sup>

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<sup>138</sup> *Id.* at art. 7.

<sup>139</sup> *Id.* at art. 13.

<sup>140</sup> *Id.* at art. 21.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at art. 14.

<sup>144</sup> *Id.* at art. 97.

<sup>145</sup> *Id.* at art. 89; Ombudsman Act, No. 7 of 1990, § 2, available at [http://www.chr.up.ac.za/chr\\_old/indigenous/documents/Namibia/Legislation/Ombudsman%20Act.pdf](http://www.chr.up.ac.za/chr_old/indigenous/documents/Namibia/Legislation/Ombudsman%20Act.pdf) (last visited July 31, 2017).

<sup>146</sup> *Mandates of the Office of the Ombudsman*, OMBUDSMAN NAMIBIA 2, <https://www.ombudsman.org.na/mandates-of-the-office-of-the-ombudsman/2/> (last visited July 31, 2017).

<sup>147</sup> NAMIBIA CONST., *supra* note 125, at art. 25.

## IX. Labor Rights

### *Work Protections Established by Law*

#### Applicable International Instruments

Namibia is party to a number of international instruments that protect workers, including:

- ILO Convention no. 29 (concerning Forced or Compulsory Labor);<sup>148</sup>
- ILO Convention no. 100 (concerning Equal Remuneration);<sup>149</sup>
- ILO Convention no. 105 (concerning the Abolition of Forced Labor);<sup>150</sup>
- ILO Convention no. 111 (concerning Discrimination in Employment and Occupation);<sup>151</sup>
- ILO Convention no. 138 (concerning Minimum Age for Admission to Employment);<sup>152</sup> and
- ILO Convention no. 182 (concerning the Worst Forms of Child Labor).<sup>153</sup>

#### Domestic Legal Protections

The Constitution of Namibia guarantees a number of economic rights, including the right to practice any profession or carry on any occupation, trade, or business,<sup>154</sup> to be paid a living wage that is adequate for the maintenance of a reasonable standard of living,<sup>155</sup> to withhold labor without being exposed to criminal penalties,<sup>156</sup> to form and join trade associations or unions,<sup>157</sup> and to be free from forced or compulsory labor.<sup>158</sup>

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<sup>148</sup> ILO Convention No. 29 (concerning Forced or Compulsory Labor) (June 28, 1930), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029) (last visited July 21, 2017).

<sup>149</sup> ILO Convention no. 100 (concerning Equal Remuneration) (June 29, 1951), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100) (last visited July 21, 2017).

<sup>150</sup> ILO Convention No. 105 (concerning the Abolition of Forced Labor) (June 25, 1957), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105) (last visited July 21, 2017).

<sup>151</sup> ILO Convention No. 111 (concerning Discrimination in Employment and Occupation) (June 11, 1966), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312256:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312256:NO) (last visited July 21, 2017).

<sup>152</sup> ILO Convention No. 138 (concerning Minimum Age for Admission to Employment) (June 26, 1973), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138) (last visited July 21, 2017).

<sup>153</sup> ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) (Jun 17, 1999), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182) (last visited July 21, 2017).

<sup>154</sup> Namibia, Constitution of 1990, art. 21(1)(i), *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017) [hereinafter NAMIBIA CONST.].

<sup>155</sup> *Id.* at art. 95(i).

<sup>156</sup> *Id.* at art. 21(1)(f).

<sup>157</sup> *Id.* at art. 21(1)(e).

<sup>158</sup> *Id.* at art. 9.

More specific labor protections are generally contained within the Labor Act, which is administered by the Ministry of Labor, Industrial Relations, and Employment Creation.<sup>159</sup>

### Minimum Wage Requirements

Namibia has not established a standard national minimum wage. However, it does establish minimum wages for specific industries, such as domestic work, construction, and security.<sup>160</sup>

### Working Hours Requirements

The Labor Act provides that any employee other than a security guard may not work for more than 45 hours a week; employees who work five days weekly may not work for more than nine hours a day, and employees who take only one weekly day off may not work for more than seven hours a day.<sup>161</sup> Casual employees, defined as workers who are employed by a single employer for no more than two days a week, may not work for longer than nine hours daily.<sup>162</sup> Shift workers who work no more than five weekly shifts may not be required to work for longer than nine hours per shift; those who work six weekly shifts generally may not be required to work for longer than 7.5 hours per shift.<sup>163</sup> Shift workers' meal breaks are counted as part of their shift time.<sup>164</sup>

With respect to overtime hours requirements, day workers may not be asked to work more than three extra hours daily or 10 extra hours weekly.<sup>165</sup>

### Overtime Remuneration

Namibian workers are entitled to overtime remuneration, subject to the provisions and calculations laid out in the Labor Act.<sup>166</sup>

### Leave Requirements

For each year of consecutive employment, workers are entitled to at least 24 days' fully-paid leave.<sup>167</sup> Upon the termination of an employment contract, employers are obliged to pay workers the balance of any leave remuneration that may have accrued.<sup>168</sup> However, casual employees are not entitled to leave under this provision.

Employees who work for five days a week are entitled to at least 30 days' sick leave annually; all

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<sup>159</sup> Labor Act, No. 388 of 1992, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29328/64850/E92NAM01.htm> (last visited July 31, 2017).

<sup>160</sup> See, e.g., *Some Domestic Workers Yet to Benefit from Minimum Wage*, NEW ERA (Apr. 6, 2016), <https://www.newera.com.na/2016/04/06/domestic-workers-benefit-minimum-wage/> (last visited July 31, 2017).

<sup>161</sup> See Labor Act, *supra* note 159, at §§ 26-27.

<sup>162</sup> *Id.* at §§ 1, 27.

<sup>163</sup> *Id.* at § 28.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at § 32.

<sup>166</sup> *Id.* at §§ 25-35.

<sup>167</sup> *Id.* at § 39.

<sup>168</sup> *Id.* at § 39(4).

other workers, excluding casual employees, are entitled to at least 36 days' annual sick leave.<sup>169</sup>

Female workers who have completed at least one year of consecutive employment with a single employer are entitled to at least four weeks' maternity leave before her expected due date, and at least eight weeks following it.<sup>170</sup> Namibian law does not guarantee that this leave be compensated,<sup>171</sup> though it does guarantee that a female employee's contract may not be terminated unless an employer has taken all reasonable steps to offer her another appropriate job, or she has unreasonably refused to accept the offer.<sup>172</sup>

### Labor Inspection and Oversight Systems

The Labor Commissioner is responsible for appointing labor inspectors to monitor occupational health and safety standards, in addition to any other duties conferred upon them by the Ministry of Labor, Industrial Relations, and Employment Creation.<sup>173</sup>

Inspectors are empowered to issue orders to rectify occupational safety and health deficiencies on employers' premises, although these orders are appealable to the Labor Courts.<sup>174</sup> Additionally, groups of at least 10 employees of a single employer at a particular place may elect from among their number employees to serve as workplace safety representatives.<sup>175</sup> Such representatives are also authorized to carry out safety inspections, investigate hazards and dangerous occurrences, investigate health, safety, or work welfare complaints of their fellow employees, and to consult with labor inspectors with respect to anything that falls under their purview.<sup>176</sup>

The Labor Courts of Namibia have jurisdiction to hear appeals from district labor courts, and the power to review and set aside (as needed) the decisions of any officer authorized to administer the terms of the Labor Act.<sup>177</sup> Labor Court decisions are appealable to the Supreme Court of Namibia.<sup>178</sup>

### Applicability of Labor Laws to Migrant Workers

ABA ROLI has not identified any laws or policies that would cause migrant workers to have less rights than citizens with respect to the labor laws.<sup>179</sup>

## **Child Labor Laws**

### International Laws, Policies, and Agreements

Namibia has ratified the CRC, which recognizes the rights of children to be protected from economic

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<sup>169</sup> *Id.* at § 40.

<sup>170</sup> *Id.* at § 41.

<sup>171</sup> *Id.* at § 41(2)(b).

<sup>172</sup> *Id.* at § 41(3).

<sup>173</sup> *Id.* at § 3.

<sup>174</sup> *Id.* at § 100.

<sup>175</sup> *Id.* at § 99.

<sup>176</sup> *Id.* at § 99(2)(b).

<sup>177</sup> *Id.* at § 18.

<sup>178</sup> *Id.* at § 21(a).

<sup>179</sup> *Id.* at § 25.

exploitation by requiring State Parties to prohibit children from performing any work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or development.<sup>180</sup> State Parties also undertake to provide minimum age requirements for employment, regulate work hours and employment conditions, and establish sanctions to ensure that child labor laws are effectively enforced.<sup>181</sup>

Ethiopia has also ratified the Optional Protocol on Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography,<sup>182</sup> in addition to the ILO Minimum Age Convention and the Worst Forms of Child Labor Convention.<sup>183</sup>

### Domestic Laws and Policies

Namibia has passed a number of laws and policies that deal with child labor, including its worst forms.

Under the Constitution, “Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development.”<sup>184</sup> The Constitution also provides that education should be free and compulsory for all below the age of 16 years.<sup>185</sup>

The minimum age for employment is 14.<sup>186</sup> Children under the age of 16 may not work between the hours of 8:00 PM and 7:00AM; additionally, they may not work in hazardous conditions, working underground in a mine or in places where goods are manufactured.<sup>187</sup> While the minimum age for hazardous work is generally 18,<sup>188</sup> children between the ages of 16 and 17 may work in hazardous conditions if the Ministry of Labor grants its approval.<sup>189</sup> According to the U.S. Department of State’s 2016 Human Rights Report, the Gender-based Violence Protection Units discussed above, in cooperation with the Ministry of Labor, Industrial Relations, and Employment Creation conduct labor inspections to look for underage workers in smaller towns and districts.<sup>190</sup>

Namibia has passed a number of national policies to address child labor, including its worst forms.

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<sup>180</sup> United Nations Convention on the Rights of the Child, art. 32(1), Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>181</sup> *Id.* at art. 32(2).

<sup>182</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-11-b&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-b&chapter=4&lang=en) (last visited July 21, 2017); *Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-11-c&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en) (last visited July 21, 2017).

<sup>183</sup> See *Child Labor and Forced Labor Reports: Namibia*, U.S. DEP’T OF LAB., BUREAU OF INT’L LAB. AFF., <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/namibia> (last visited July 31, 2017) [hereinafter *Child Labor and Forced Labor Reports: Namibia*].

<sup>184</sup> NAMIBIA CONST., *supra* note 154, at art. 9.

<sup>185</sup> *Id.* at art. 20.

<sup>186</sup> Labor Act, *supra* note 159, at § 3(2).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at § 3(4).

<sup>189</sup> U.S. DEP’T OF STATE, NAMIBIA 2016 HUMAN RIGHTS REPORT 21-22, <https://www.state.gov/documents/organization/265496.pdf> (last visited July 31, 2017).

<sup>190</sup> *Id.* at 22.

These include the Decent Work Country Program, the National Development Plan IV, the Education for All National Plan of Action, and the National Agenda for Children.<sup>191</sup>

### Provisions Regarding the Worst Forms of Child Labor

The minimum age for voluntary military service in Namibia is 18.<sup>192</sup>

The trafficking of children is prohibited under the Prevention of Organized Crime Act (POCA) and the Child Care and Protection Act (CCPA).<sup>193</sup> The CCPA also prohibits the commercial sexual exploitation of children, and the use of children in illicit activities.<sup>194</sup>

According to the U.S. Department of Labor's 2015 Findings on the Worst Form of Child Labor:

In 2015, Namibia made a moderate advancement in efforts to eliminate the worst forms of child labor. The Government passed the Child Care and Protection Act, which criminalizes child trafficking, commercial sexual exploitation of children, and the use of children in illicit activities. The Government also ordered the elimination of secondary education school fees and implemented regulations that prohibit the employment of domestic workers less than 18 years. However, children in Namibia are engaged in child labor, including in herding livestock, and in the worst forms of child labor, including in commercial sexual exploitation, sometimes as a result of human trafficking. Gaps remain in existing laws regarding the prohibitions on hazardous work for children in agriculture and there are no existing social programs that specifically target child labor in agriculture.<sup>195</sup>

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<sup>191</sup> *Child Labor and Forced Labor Reports: Namibia*, *supra* note 183.

<sup>192</sup> *Id.*

<sup>193</sup> Prevention of Organised Crime Act, No. 29 of 2004, § 15, *available at* [https://laws.parliament.na/cms\\_documents/prevention-of-organised-crime-3a3a391a4a.pdf](https://laws.parliament.na/cms_documents/prevention-of-organised-crime-3a3a391a4a.pdf) (last visited July 31, 2017); Child Care and Protection Act, No. 3 of 2015, §§ 202, 234, *available at* <http://www.lac.org.na/laws/2015/5744.pdf> (last visited July 31, 2017) [hereinafter CCPA].

<sup>194</sup> *See* CCPA, *supra* note 193, at § 234.

<sup>195</sup> U.S. DEP'T OF LAB., 2015 FINDINGS ON THE WORST FORMS OF CHILD LABOR: NAMIBIA (2015) <https://www.dol.gov/sites/default/files/images/ilab/child-labor/Namibia.pdf> (last visited July 31, 2017).

## **X. Rights of Communities and Indigenous People**

### ***Recognition of Customary and Communal Land Rights***

The Constitution of Namibia prohibits discrimination on the grounds of ethnic origin,<sup>196</sup> but there is no recognition of the rights of indigenous peoples in the Constitution.<sup>197</sup> The Constitution does protect the right to property.<sup>198</sup>

Under the Communal Land Reform Act of 2002,

[A]ll communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities.<sup>199</sup>

In 2007, Namibia voted for the UN Declaration on the Rights of Indigenous Peoples.

Nevertheless, the UN Human Rights Committee has noted the prevalence of *de facto* racial discrimination and discrimination against indigenous peoples. In particular, the Committee notes that:

[A]ll traditional indigenous lands remain under State ownership while traditional authorities may only administer communal lands according to the Communal Land Reform Act, and that indigenous groups are insufficiently consulted regarding the extraction of natural resources on their traditional lands (arts. 2 and 26). The State party should ensure that indigenous peoples have titles over lands and territories that they traditionally occupied or resources they owned. It should seek the free and informed consent of indigenous communities and give primary consideration to their opinions and decisions prior to granting licen[s]es to extractive industries.<sup>200</sup>

### ***Governance of Land Without Formal Title***

ABA ROLI has not identified any provisions of law that deal with the governance of land without formal title.

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<sup>196</sup> Namibia, Constitution of 1990, art. 3, *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017) [hereinafter NAMIBIA CONST.].

<sup>197</sup> *Indigenous peoples in Namibia*, INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS, <http://www.iwgia.org/regions/africa/namibia> (last visited July 31, 2017).

<sup>198</sup> NAMIBIA CONST., *supra* note 196, at art. 16.

<sup>199</sup> Communal Land Reform Act, No. 5 of 2002, § 17, *available at* <http://www.lac.org.na/laws/pdf/communallandreformact.pdf> (last visited July 31, 2017).

<sup>200</sup> United Nations Human Rights Committee, Concluding Observations on the Second Report of Namibia §§ 43-44, U.N. Doc. CCPR/C/NAM/CO/2, *available at* [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NAM&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NAM&Lang=EN) (navigate to Reporting Cycle II, then Concluding Observations, to download a copy of the document) (last visited July 31, 2017).

## ***Community Rights in Land-Based Development***

Communal lands are administered by traditional authorities and land boards in a joint consultative process.<sup>201</sup> Land disputes in communal areas are generally governed by traditional dispute resolution mechanisms, and Communal Land Boards are empowered to hear disputes on such matters.<sup>202</sup>

A number of resource extraction policies and laws in Namibia appear to require improved stakeholder consultations, including the Minerals Policy of 2003.<sup>203</sup> It is unclear to what extent environmental impact assessments conducted under the terms of the Environmental Management Act and the Environmental Impact Assessment Regulations require community consultation processes.<sup>204</sup>

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<sup>201</sup> USAID, COUNTRY PROFILE: PROPERTY RIGHTS AND RESOURCE GOVERNANCE: NAMIBIA 8 (2016), *available at* [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Namibia\\_Profile.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Namibia_Profile.pdf) (last visited July 23, 2017) [hereinafter USAID, COUNTRY PROFILE: NAMIBIA].

<sup>202</sup> *Id.* at 9.

<sup>203</sup> *Id.* at 15.

<sup>204</sup> *See Namibia, Mining Law 2017*, African Law & Business ch. 1, <https://www.africanlawbusiness.com/publications/mining-law/mining-law-2017/namibia/q-and-a> (last visited July 31, 2017).

## **XI. Immigration and Border Security**

### ***Immigration Law Prohibitions against TIP and Migrant Smuggling***

The Ministry of Home Affairs and Immigration is responsible for the management of immigration into Namibia, pursuant to the terms of the Immigration Control Act (Immigration Act).<sup>205</sup> The Immigration Act does not appear to contain any provisions specific to TIP or migrant smuggling.

However, under the terms of the Prevention of Organized Crime Act (POCA), any person who participates in or who aids and abets cross-border TIP commits an offense, and may face a fine of up to N\$1,000,000 and up to 50 years' imprisonment. Additionally, POCA criminalizes the participation in, or the aiding and abetting of, the smuggling of migrants by land, air, or sea in order to obtain a financial or other material benefit.<sup>206</sup>

### ***Protections for TIP Victims in Immigration Law***

The Immigration Act does not specifically provide for immigration relief for TIP victims; however, to the extent that TIP victims qualify for asylum under the terms of the Refugees (Recognition and Control) Act,<sup>207</sup> they may be able to obtain immigration relief through this avenue.

The Child Care and Protection Act (CCPA) specifically provides that criminal prosecutions may not be instituted against child victims of trafficking for violations of the Immigration Act.<sup>208</sup> The CCPA also provides that child TIP victims may not be repatriated to their home countries without due consideration for the child's best interests, his or her safety during the repatriation process, the availability of suitable care arrangements, and the safety of the child to the country of repatriation, including an assessment of whether the child might be harmed, re-trafficked, or killed.<sup>209</sup>

POCA does not contain provisions relating to immigration relief for adult victims of trafficking.

ABA ROLI has not identified any publicly-available training documentation for customs agencies or port authorities that relate to the monitoring of TIP. However, it is known that the Ministry of Home Affairs and Immigration provides immigration officials with materials to guide TIP victim identification.<sup>210</sup>

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<sup>205</sup> Immigration Control Act, No. 7 of 1993, *available at* <http://www.refworld.org/docid/3ae6b4fb0.html> (last visited July 31, 2017).

<sup>206</sup> Prevention of Organised Crime Act, No. 29 of 2004, §§ 15-16, *available at* [https://laws.parliament.na/cms\\_documents/prevention-of-organised-crime-3a3a391a4a.pdf](https://laws.parliament.na/cms_documents/prevention-of-organised-crime-3a3a391a4a.pdf) (last visited July 31, 2017).

<sup>207</sup> Namibia Refugees (Recognition and Control) Act, No. 41 of 1999, *available at* <http://www.refworld.org/docid/3ae6b59ac.html> (last visited July 31, 2017).

<sup>208</sup> Child Care and Protection Act, No. 3 of 2015, §§ 211, *available at* <http://www.lac.org.na/laws/2015/5744.pdf> (last visited July 31, 2017) [hereinafter CCPA].

<sup>209</sup> *Id.* at § 216.

<sup>210</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 280, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2016)

### ***Denial of Entry or Visa Revocation for TIP Offenders***

The Immigration Act does not specifically provide that TIP and TIP-related offenses constitute grounds for inadmissibility or deportation. However, TIP convictions, to the extent that they satisfy the requirements of the law, may cause offenders to be considered prohibited immigrants, subject either to inadmissibility or deportation proceedings.<sup>211</sup>

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<sup>211</sup> Immigration Control Act, *supra* note 205, at § 39.

## **XII. National Security and Humanitarian Emergencies**

### ***National Security Laws and Strategies***

Under the Constitution, the Head of the Intelligence Service is the principal advisor to the President and the Government on matters relating to national security and intelligence.<sup>212</sup> Namibia has a National Defense Force, the purpose of which is to defend “the territory and national interests.”<sup>213</sup>

The website of the South West Africa People’s Organization, the governing party in Namibia, references a National Security Policy Framework (“NSPF”). The purpose of the NSPF is to “guide the country’s intelligence and security agencies to harmonize and coordinate their operations more comprehensively and optimally.”<sup>214</sup> ABA ROLI has not been able to obtain a publicly-available copy of this document to review its provisions.

### ***Firearm Import/Export Regulations***

The export, import, transit, and retransfer of firearms is generally governed by the Arms and Ammunition Act and the Explosives Act.<sup>215</sup> It is a criminal offense to trade in firearms.<sup>216</sup>

### ***Conflict Resources Regulations***

Namibia does not appear to have any national laws, policies, or regulations governing the use or trade of conflict minerals or other conflict resources. However, Namibia is a Participant of the Kimberly Process,<sup>217</sup> and as such is obliged to meet the requirements laid out under it.

### ***Emergency Management Laws and Strategies***

The Namibian Constitution permits the President to declare a state of emergency during a state of national defense or public emergency that threatens the life of the nation or the constitutional order. During a state of emergency or when a state of national defense prevails, the President has the power by Proclamation to make such regulations as in his or her opinion are necessary for the protection of national security, public safety and the maintenance of law and order.<sup>218</sup> In 2016, the President declared a state of emergency in connection with an ongoing drought in Namibia, which has made thousands of people food insecure.<sup>219</sup>

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<sup>212</sup> Namibia, Constitution of 1990, art. 120A, *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017) [hereinafter NAMIBIA CONST.].

<sup>213</sup> *Id.* at art. 118.

<sup>214</sup> Asser Ntinda, *National security policy framework to be finalized soon*, SWAPO PARTY, [http://www.swapoparty.org/national\\_security\\_policy\\_framework\\_to\\_be\\_finalized.html](http://www.swapoparty.org/national_security_policy_framework_to_be_finalized.html) (last visited July 31, 2017).

<sup>215</sup> Arms and Ammunition Act, No. 7 of 1996; Explosives Act, No. 26 of 1956.

<sup>216</sup> UN PROGRAMME OF ACTION, NATIONAL REPORTING TOOL 1 (June 1, 2016), *available at* <http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2016@137@2016%20-%20PoA%20-%20Namibia%20-%20E.pdf> (last visited July 31, 2017).

<sup>217</sup> *Namibia*, KIMBERLEY PROCESS, <https://www.kimberleyprocess.com/en/namibia> (last visited July 31, 2017).

<sup>218</sup> NAMIBIA CONST., *supra* note 212, at art. 26.

<sup>219</sup> Ndanki Kahiurika, *President declares drought an emergency*, THE NAMIBIAN (June 30, 2016),

Additionally, in 2012, Namibia passed the Disaster Risk Management Act. The Disaster Risk Management Act has four main objectives: (1) to provide for the establishment of institutions for disaster risk management in Namibia; (2) to provide for an integrated and coordinated disaster management approach that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery; (3) to provide for declarations of national, regional and local disasters; and (4) to provide for the establishment of the National Disaster Management Risk Fund.<sup>220</sup>

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<http://www.namibian.com.na/152587/archive-read/President-declares-drought-an-emergency> (last visited July 31, 2017).

<sup>220</sup> Disaster Risk Management Act, No. 10 of 2012, Preamble, *available at* [http://www.ifrc.org/docs/IDRL/-%20To%20add/Namibia\\_2012\\_Disaster%20Risk%20Management%20Act.pdf](http://www.ifrc.org/docs/IDRL/-%20To%20add/Namibia_2012_Disaster%20Risk%20Management%20Act.pdf) (last visited July 31, 2017).

### **XIII. Conclusion**

Namibia is making significant efforts to fully meet the minimum standards for the elimination of TIP. For example, the government increased trafficking prevention efforts and conducted anti-trafficking trainings and awareness activities. However, the U.S. Department of State and the United Nations recommend that Namibia take additional steps to address TIP, including finalizing and enacting anti-trafficking legislation; ensuring that adequate frameworks are in place to identify victims and to investigate, prosecute, and convict traffickers; allocating resources to rehabilitate victims; and increasing efforts to raise awareness, especially in rural areas.