



REPUBLIC OF NAMIBIA

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The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva, and other international Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights, and has the honour to transmit herewith Namibia's response to the request for contributions dated 29 January 2021 by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. The response sets out information on Namibia's legal framework in relation to displaced/stateless persons, including children, and the protection from contemporary forms of slavery.

The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the OHCHR the assurance of its highest consideration.

**Office of the High Commissioner for Human Rights
GENEVA**





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Information in response to call for inputs from the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Namibia takes this opportunity to participate in the submission of information relating to the request of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences which request focuses on displaced persons.

1. Is information/evidence available regarding displaced persons such as asylum seekers, refugees, internally displaced persons (IDPs) and stateless persons being subject to contemporary forms of slavery in your country?

No

2. Is there a gender dimension to exploitation and if so, in what way?

No

3. Are other sub-groups within displaced persons (e.g. stateless persons, LGBT, disabled persons, younger/older persons, affected by different forms of slavery and if yes, in what way?

No

4. Is there any indication/evidence that domestic rules and/or legislation related to the regulation of displaced persons contribute to an increased vulnerability of displaced persons to exploitations?

No

5. Are the same labour standards applicable to all categories of displaced persons, including IDPs? Are these standards the same as those applicable to (other) nationals of the country?

Yes, the standard applies to all, nationals and non-nationals.

6. For state which are parties to the Convention Relating to Status of Refugees 1951 and the Convention Relating to the Status of Stateless Persons 1954, are refugees and stateless persons granted the same treatment in relation to, for example, remuneration, hours of week, overtime arrangements, annual leave, collective bargaining and social security benefits in accordance with common Article 24? If not, why not?

Refugees are treated same as nationals and other nationals, the Labour Act, 2007 (Act No. 11 of 2007) applies to all persons employed without distinction on employee's status. With regard to stateless persons, a qualitative study on statelessness and those at risks of statelessness in Namibia was conducted and stakeholders workshop was held to validate the draft report. The next step is to conduct qualitative research, identify and register them. The consideration of Namibia's of accession to the 1954 and 1961 Conventions relating to statelessness is at an advanced stage, and the National Action Plan is completed. In the meantime, Namibia continues to take steps to improve birth registration acknowledging that poor birth registration contributes to statelessness.

7. What arrangements (in law, policy and practice) are there for protection of the labour rights of displaced persons for states not parties to these instruments?

The Namibian Constitution under Articles 8 (b) and 9 (1 & 2) ensures the entrenched respect for human dignity and prohibits slavery and forced labour in Namibia. This is further articulated in the Labour Act, 2007 through the Labour Amendment Act, 2012 (Act No. 2 of 2012) which provides for comprehensive labour law for all employers and employees, entrenches fundamental labour rights and protections as well as regulates basic terms and conditions of employment in Namibia. In terms of the Labour Act, 2007, all employees have the legal standing to raise issues or claims of unfair labour practices with the Office of the Labour Commissioner, and in the instance where their employment conditions/circumstances infringe on their human rights under the Namibian Constitution, they have recourse in the courts with the assistance of the Ombudsman (where necessary) under Article 25(2) of the Namibian Constitution.

8. Are there mechanisms for ensuring that displaced persons, victimised in contemporary forms of slavery can report such treatment without endangering their status stay in the country?

Article 10(1) of the Namibian Constitution made a provision to ensure that equality and freedom from discrimination is guaranteed and all persons shall be equal before the law. In the event that a person is victimised or experiences an infringement on his/her right to be protected against any form of slavery or forced labour as per Article 9 of the Namibian Constitution, such person has the right to

approach seek legal assistance from the Ombudsman or approach the Court for appropriate relief by virtue of Article 25 of the Namibian Constitution.

9. Do displaced persons victimised by contemporary forms of slavery have effective access to justice, remedies and compensation? What barriers are encountered in practice? Are such remedies available even if/after the individual has returned to their country of origin?

Currently there is no official statistics available justifying any forms of slavery for displaced persons. Therefore, Ministry of Labour, Industrial Relations and Employment Creation and Social Security Commission are mandated to ensure labour conditions in the country are in compliance with the Namibian Constitution and in particular the provisions on human rights in all sectors including employment by public, private and individual persons. Article 25 of the Namibian Constitution provides that aggrieved persons have a right to approach the Court for appropriate relief and seek legal assistance from the Ombudsman. In terms of Article 10 of the Namibian Constitution all persons are equal before the law and any one may approach the court for adequate relief. The potential barrier to access to justice may be charges and in addressing this matter in relation to labour law, the Labour Act, 2007 provides for a legal process that incorporates alternative dispute mechanisms with the aim to deliver efficient and expedited relief sought by aggrieved employees or those who suffer unfair labour practices as defined in the Act.

10. What mechanisms are in place to hold business, employers and criminals who engage in exploitation of displaced persons accountable in your work?

Article 9 of the Namibian Constitution prohibits any forms of slavery and servitude in order to protect the best interest of the employees at any level or forms of employment. Those transgressing this provision will be dealt with in accordance with specific pieces of legislation. Section 4 (3) of the Labour Act, 2007 provides for a fine of N\$ 20 000 (approximately 1364 USD) for anyone (employer) who directly or indirectly, cause, permit or require an individual to perform forced labour which is prohibited under the Act. Statutory sentences guide the decision of the judiciary but do not remove the discretion of the judges in determining the appropriate remedy in each case.

11. Are mechanisms in place to protect exploited workers from prosecution for violations of labour/immigration laws in the country?

Generally, the law protects everyone, and where there is a violation of laws, if the person is brought before the court, the court will make a determination based on the circumstances of each case. The Labour law dispute resolution mechanism allows for

disputes to be addressed between the parties before being brought before the courts and this provides an opportunity for amicable solutions between the parties. Section 42 of the Labour Act, 2007 allows for an employee to leave a workplace that is dangerous or a threat to his/her wellbeing and in that instance that employee is still entitled to receive the conditions of service owed by the employer.

12. What are wider challenges in preventing contemporary forms of slavery among displaced persons and in protecting victims?

Internal displacement of persons only takes place during the rainfalls only and those displaced returns to their habitual places immediately after the rain. The laws of Namibia prohibit any form of slavery, including among displaced persons, and chances of this is also limited by the fact that displaced persons are safeguarded during their stay at centres for displaced persons.

- Worst forms of Child Labour as affecting displaced children

Namibia has ratified the ILO Convention on Worst forms of Child Labour and is also a party to other international instruments such as the Convention on the Rights of the Child, African Charter on the Rights and Welfare of the Child, International Labour Organisation (ILO) Convention 138 concerning Minimum Age for Admission to Employment, and the Protocol to the Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. All these instruments prohibit child labour and set standards for the protection of children and their human rights. The obligations and principles emanating from these international instruments are in line with the domestic legal framework on the protection of children against child labour, trafficking, and economic exploitation.

In terms of the Namibian Constitution, children are to be safeguarded against economic exploitation and child labour under Article 15(2). The Labour Act, 2007 complements this protection by explicitly prohibiting child labour under section 3 of the Act, which also criminalises the employment of children under the set prohibited circumstances. The Child Care and Protection Act, 2015 (Act No. 3 of 2015) and the Combating of Trafficking in Persons Act, 2018 (Act No. 1 of 2018) are some of the most recent pieces of legislation which define and prohibit actions which amount to exploitation of children. The legal framework protects all children, including displaced children.

End.