



Republic of Namibia
Annotated Statutes

Combating of Trafficking in Persons Act 1 of 2018 (GG 6562)

**This Act has been passed by Parliament, but it has not yet been brought into force.
It will come into force on a date set by the Minister in the *Government Gazette*.**

ACT

To give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to criminalise trafficking in persons and related offences; to protect and assist victims of trafficking in persons, especially women and children; to provide for the coordinated implementation and administration of this Act; and to provide for incidental matters.

[The Government Gazette does not state the date of signature by the President.]

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**SCHEDULE: TEXT OF THE UNITED NATIONS PROTOCOL
TO PREVENT TRAFFICKING IN PERSONS**

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1
INTRODUCTORY PROVISIONS

Definitions

1. (1) In this Act, unless the context otherwise indicates -

“carrier” includes a person who is the owner or the employee of the owner, an agent, an operator, a lessor, a driver, a charterer or a master, of any means of transport;

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“child” means a person who is under the age of 18 years;

“Child Care and Protection Act” means the Child Care and Protection Act, 2015 (Act No. 3 of 2015);

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“debt bondage” means the involuntary status or condition that arises from a pledge by a person of -

- (a) his or her personal services;
- (b) the personal services of another person under his or her control,

as security for a debt owed or claimed to be owed, including a debt incurred or claimed to be incurred after the pledge is given, by that person if the -

- (i) debt owed or claimed to be owed, as reasonably assessed, is manifestly excessive;
- (ii) length or nature of the services are not limited and defined; or
- (iii) value of the services as reasonably assessed is not applied towards the liquidation of the debt or purported debt;

“designated social worker” means a designated social worker as defined in section 1 of the Child Care and Protection Act;

[The word “and” in the phrase “Child Care and Protection Act” is misspelt in the *Government Gazette*, as reproduced above.]

“electronic communications” means an emission, transmission or reception of information, including pictures, voice, sound, data, text, video, visual images, moving images and pictures, signals or a combination by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or an agency of a like nature, whether with or without the aid of tangible conductor;

[The phrase “tangible conductor” should be “a tangible conductor”, “tangible conductors” or “tangible conduct” to be grammatically correct. There appears to be a word missing after the phrase “a combination” – the intention may have been to refer to “a combination thereof”. There also appears to be a word missing after the word “optical” – the intention may have been to refer to “optical fibres”, “optical impulses” or “optical systems”. Alternatively, the intention may have been to refer to “optical or electromagnetic systems”.]

Compare the similar definitions of “electronic communications” in the South African Prevention and Combating of Trafficking in Persons Act 7 of 2013 (based on the definition in the South African Electronic Communications Act 36 of 2005), which also seems to be missing a word after “optical”:

“electronic communications” means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct”.

Note that “electronic communications” is used in this statute interchangeably as a noun that takes a plural verb (“electronic communications are”) and a noun that takes a singular verb (“electronic communications is”). There is also an interchangeable use of “electronic communications” and “electronic communication”.]

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“electronic communications service” means a service provided to the public, the State or to the subscribers to the service, which consists wholly or mainly of conveyance by any means of electronic communications over an electronic communication network;

“electronic communication service provider” means a person who provides an electronic communications service;

“exploitation” includes, but is not limited to -

- (a) prostitution or any form of sexual exploitation;
- (b) forced labour or forced services, prohibited child labour or other economic exploitation;
- (c) slavery or practices similar to slavery, including debt bondage or a forced marriage;
- (d) involuntary servitude;
- (e) criminal exploitation;
- (f) removal of organs or body parts; or
- (g) the impregnation of a female person against her will for the purpose of selling the child when the child is born;

“foreign victim” means a victim of trafficking who is not a citizen of Namibia or a permanent resident of Namibia;

“immigration officer” means an immigration officer as defined in section 1 of the Immigration Control Act;

“Immigration Control Act” means Immigration Control Act, 1993 (Act No. 7 of 1993);

“Minister” means the Minister responsible for gender equality and child welfare;

“Namibia Refugees (Recognition and Control) Act” means Namibia Refugees (Recognition and Control) Act, 1999 (Act No. 2 of 1999);

“police officer” means a member of the Namibian Police established under section 2 of Police Act, 1990 (Act No. 19 of 1990), a person appointed as a traffic officer under section 11 of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999) or a person appointed as an immigration officer under section 3(1)(b) of the Immigration Control Act;

“prescribed” means prescribed by regulations made in terms of this Act;

“social worker” means a social worker as defined in section 1 of the Social Work and Psychology Act, 2004 (Act No. 6 of 2004);

“trafficker” means a person who is charged with the offence of trafficking;

“trafficking in persons” has the meaning as assigned to it by section 3 of this Act;

“trafficking in persons protocol” means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, a copy of the English text of which is set out in the Schedule;

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“this Act” includes the regulations made under it; and

“victim of trafficking” means a person who is a victim of the offence of trafficking in persons, including a person who is suspected on reasonable grounds to have been trafficked.

(2) For the purposes of subsection (1) -

“forced labour or services” means labour or services obtained or maintained through threats, the use of force, intimidation, exploitation or other forms of coercion or physical restraint;

“forced marriage” means a marriage which is without the free and full consent of both spouses or is in contravention of any of the laws on civil and customary marriages in Namibia;

“prohibited child labour” means any child labour which is in contravention of the Namibian Constitution, the Labour Act, 2007 (Act No. 11 of 2007) or the Child Care and Protection Act;

“removal of organs or body parts” means the removal or trade in any human organ or other body part in contravention of a law;

“servitude” means a condition in which the labour or services of a person are provided or obtained through threats of harm to that person or another person or through any scheme, plan or pattern intended to cause the person to believe that if the person does not perform the labour or services in question the person or another person would suffer harm; and

“sexual exploitation” means the commission of any offence of a sexual nature in terms of a law against a person.

Objects of Act

2. The objects of this Act are to -

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

CHAPTER 2

TRAFFICKING IN PERSONS AND RELATED OFFENCES

Prohibition of trafficking in persons

3. (1) A person commits an offence of trafficking in persons if he or she intentionally recruits, transports, delivers, transfers, harbours, sells, exchanges, leases or receives a person by means of -

- (a) threat;

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- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) kidnapping;
- (g) abuse of power or abuse of position of vulnerability; or
- (h) giving or receiving of payments or benefits to obtain the consent of a person who has control over another person,

for the purposes of exploitation.

(2) The recruitment, transportation, transfer, harbouring or receiving of a child for the purposes of exploitation is trafficking in persons even if this does not involve any of the means set out in paragraph (a), (b), (c), (e), (f), (g) or (h) of subsection (1).

[It appears that a cross-reference to paragraph (d) (“fraud”) may have been accidentally omitted from this provision. Compare section 11(2)(a) below and Article 3 of the trafficking in persons protocol (emphasis added):

“Article 3: Use of terms

For the purposes of this Protocol:

- (a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of **fraud**, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of 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;
- (b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ **even if this does not involve any of the means set forth in subparagraph (a) of this article;**
- (d) ‘child’ shall mean any person under eighteen years of age.”]

(3) A person who facilitates or secures the adoption of a child, for the purpose of exploiting that child, commits an offence.

- (4) A person convicted of an offence under subsection (1), (2) or (3) -
 - (a) in the case of a first conviction, is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment; and
 - (b) in the case of a second or subsequent conviction, is liable to a fine not exceeding N\$2 500 000 or to imprisonment for a period not exceeding 50 years or to both such fine and such imprisonment.

Facilitating trafficking in persons

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4. (1) A person commits an offence if he or she -
- (a) leases, subleases, uses or allows to be used any room, house, premises, building or structure for the purpose of facilitating or promoting trafficking in persons;
 - (b) subsequent to the lease or sublease of any room, house, premises, building or structure, becomes aware or ought reasonably to have known or suspected that it is being used to facilitate or promote trafficking in persons and fails to report that knowledge to a police officer;
 - (c) intentionally advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcasting or distribution of information that facilitates or promotes trafficking in persons by any means, including the use of electronic communications; or
 - (d) finances, controls or organises the commission of an offence under this subsection.

(2) Every electronic communications service provider operating in Namibia who becomes aware or is aware that any electronic communications, stored on or transmitted over its electronic communications system contains information in contravention of subsection (1)(c), must -

[The comma after the phrase “any electronic communications” is superfluous.]

- (a) report the particulars relating to any such communication to a police officer;
- (b) take such reasonable steps as are necessary to preserve evidence as may be required by the relevant investigative and prosecuting authorities, for purposes of investigation and prosecution by the relevant authorities; and
- (c) without delay take such reasonable steps as are necessary to prevent continued access to those electronic communications by any -
 - (i) of the customers of that electronic communications service provider; or
 - (ii) person if the electronic communications are stored on the electronic communications system of the electronic communications service provider.

(3) An electronic communications service provider, who fails to comply with the provisions of paragraphs (a), (b) or (c) of subsection 2, commits an offence.

(4) A person who is convicted of an offence under subsection (1) or (3) is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.

Debt bondage

5. A person who intentionally engages in conduct that causes another person to enter into debt bondage commits an offence and is on conviction liable -

- (a) in the case of a first conviction, to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment; and

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- (b) in the case of a second or subsequent conviction to a fine not exceeding N\$2 500 000 or to imprisonment for a period not exceeding 50 years or to both such fine and such imprisonment.

Possession, destruction, confiscation, concealment or tampering with identification documents and travel documents

6. (1) A person commits an offence if he or she possesses, destroys, confiscates or conceals an identification document or a travel document or tampers with an identification document or a travel document of a person in facilitating or promoting an offence of trafficking in persons.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.

Fraudulent identification documents and travel documents

7. A person commits an offence if he or she makes, gives or sells a fraudulent identification document or travel document for the purposes of facilitating or promoting the trafficking in persons and is on conviction liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.

Using services of victims of trafficking

8. (1) A person commits an offence if he or she intentionally benefits, financially or otherwise, from the services of a victim of trafficking in persons or uses or allows another person to use the services of a victim of trafficking in persons.

(2) A person who is convicted of an offence under subsection (1), is liable -

- (a) in the case of a first conviction, to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment; and
- (b) in the case of a second or subsequent conviction, to a fine not exceeding N\$2 500 000 or to imprisonment for a period not exceeding 50 years or to both such fine and such imprisonment.

Liability of carriers

9. (1) A carrier commits an offence if he or she knowingly transports or ought reasonably to have known that he or she is transporting a victim of trafficking within Namibia or across the borders of Namibia.

(2) A carrier who knows or suspects that any of his or her passengers is a victim of trafficking must immediately report that suspicion to a police officer.

(3) A police officer who receives a report under subsection (2) must act in accordance with section 12(2) and section 12(3).

(4) A carrier who fails to comply with subsection (2) commits an offence.

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(5) A person who is convicted of an offence under subsection (1) or (4) is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment;

(6) If the court finds on a balance of probabilities that the carrier has knowingly transported a victim of trafficking or ought reasonably to have known that he or she was transporting a victim of trafficking, the carrier is liable to pay the expenses incurred in connection with the -

- (a) care of the victim of trafficking;
- (b) accommodation of the victim of trafficking;
- (c) transportation of the victim of trafficking to his or her country or to the place from where he or she is has been trafficked; and

[The word “is” in the phrase “the place from where he or she is has been trafficked” is superfluous.]

- (d) repatriation or return of the victim of trafficking to his or her country or to the place from where he or she has been trafficked.

Involvement in offences under this Act

10. A person who -

- (a) attempts to commit or performs any act aimed at participating in the commission of an offence under this Chapter;
- (b) incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages or procures any other person to commit an offence under this Chapter; or
- (c) conspires with any other person to commit an offence under this Act,

commits an offence and is on conviction liable to the same penalties as if he or she has committed that offence.

Exclusion of defences and vicarious liability

11. (1) It is not a defence to a charge of contravening section 3, 4, 5, 6, 7, 8, 9 or 10 that -

- (a) the victim of trafficking had previously engaged in prostitution or pornography or has been convicted of any criminal offence; or
- (b) the purpose for which the offence was committed was not fulfilled.

(2) It is not a defence to a charge of contravening section 3, 4, 5, 6, 7, 8, 9 or 10 that -

- (a) a child who is a victim of trafficking or person having control or authority over the child has -
 - (i) consented to the intended exploitation; or

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- (ii) the action which was intended to constitute an offence under this Act or that the intended exploitation or action did not occur,

even if none of the means referred to in section 3(1)(a), (b), (c), (d), (e), (f), (g) or (h) have been used; or

- (b) a person other than a child who is a victim of trafficking has -

- (i) consented to the intended exploitation; or

- (ii) the action which was intended to constitute an offence under this Act or that the intended exploitation or action did not occur,

if one or more of the means referred to in section 3(1)(a), (b), (c), (d), (e), (f), (g) or (h) have been used.

(3) In order to establish liability of an employer or principal, in terms of section 3, 4, 5, 6, 7, 8, 9 or 10, the conduct of an employee or agent or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person acted -

- (a) within the scope of his or her employment;
- (b) within the scope of his or her actual or apparent authority; or
- (c) with the express or implied consent of a director, member or partner of the employer or principal.

(4) Subsection (3) does not exclude the liability of an employee, agent or any other person acting on behalf of the employer or principal, for committing an offence under this Act.

(5) A finding by a court that an employer or principal has contravened section 3, 4, 5, 6, 7, 8, 9 or 10 serves as a ground for the revocation or cancellation of any licence or registration that the employer or principal may require in order to conduct its business.

(6) The clerk or the registrar of the court which makes the finding referred to in subsection (5) must in writing notify the Namibian authority that granted the licence or registration of such finding.

(7) On receipt of information under subsection (6) the Namibian authority, responsible for granting of the licence or registration, may review the licence or registration and where necessary revoke or cancel the licence or registration.

[The commas in subsection (7) appear to be misplaced. It should probably read:

“(7) On receipt of information under subsection (6), the Namibian authority responsible for granting of the licence or registration may review the licence or registration and where necessary revoke or cancel the licence or registration.”]

CHAPTER 3

PROTECTION OF AND ASSISTANCE TO VICTIMS OF TRAFFICKING

Reporting, identification and referral of victims of trafficking

12. (1) A person who has information about the trafficking of a person or reasonably suspects that a person is being trafficked must make a report to a police officer or a state employed social worker.

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- (2) A police officer who -
- (a) has information about trafficking of a person or who reasonable suspects that a person is being trafficked; or
 - (b) receives a report under subsection (1) and reasonably suspects that a person concerned is being trafficked,

must as soon as possible make a report to a state employed social worker.

- (3) The police officer referred to in subsection (2) must -
- (a) provide assistance to the person contemplated in that subsection, if that person requires assistance; and
 - (b) take the person contemplated in that subsection to a place of safety or to a person or organisation designated in terms of section 13, if the safety of the person is in danger.
- (4) The state employed social worker who receives a report in terms of subsection (1) or (2) must -
- (a) make an assessment and determine whether the person is a victim of trafficking; and
 - (b) if he or she finds that the person is a victim of trafficking, issue to that person a document indicating that the person is a victim of trafficking.

(5) If the state employed social worker has made a determination under section (4), that a child is a victim of trafficking, the social worker must refer the child to a designated social worker for an investigation under section 139 of the Child Care and Protection Act to determine whether the child is in need of protective services.

(6) Only a state employed social worker designated by the Minister for the purpose of assessing and determining the status of persons as victims of trafficking must assess and determine a person as a victim of trafficking in persons.

[The word “must” should be “may”, to accord with the use of the term “only”, assuming that the intention is to limit the stated function to designated state-employed social workers.]

(7) The identity of the person who makes the report under this section or section 9(2) must be kept confidential unless the court orders otherwise.

Assistance to victims of trafficking

13. (1) The Minister may designate a person or an organisation to provide appropriate services to victims of trafficking.

- (2) The services referred to in subsection (1), includes -

[The verb “includes” should be “include” to be grammatically correct. The comma after the phrase “subsection (1)” is superfluous.]

- (a) providing the victim of trafficking with housing;
- (b) counselling the victim of trafficking;

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- (c) providing the victim of trafficking with information regarding his or her legal rights in a language that he or she understands;
 - (d) providing medical or psychological assistance to the victim of trafficking; or
 - (e) providing safety to the victim of trafficking.
- (3) The services referred to in subsection (2) -
- (a) may be provided to a person who is on reasonable grounds suspected to be a victim of trafficking; and
 - (b) must be provided to a victim of trafficking irrespective of the nationality of the victim.

Issuing of visitors entry permit to foreign victims

14. (1) Despite the provisions of the Immigration Control Act, an immigration officer must issue a visitors entry permit to a foreign victim, irrespective of his or her status, to remain in Namibia for period of 90 days which may be extended subject to the conditions prescribed by the Minister responsible for immigration and home affairs.

(2) Subsection (1), only applies to a foreign victim who is placed in a place of safety or in the care of a person or an organisation designated under section 13.

[The comma after the phrase "Subsection (1)" is superfluous.]

(3) The police officer or social worker contemplated in section 12 must inform the foreign victim of his or her right to apply and to remain, for the period referred to in subsection (1), in Namibia.

Issuing of temporary residence permit to foreign victims

15. (1) Despite the provisions of the Immigration Control Act, the Minister responsible for immigration and home affairs may, subject to such conditions as he or she may prescribe, issue a temporary residence permit to a foreign victim -

- (a) in respect of whom a report has been made in terms of section 9 or section 12; and
 - (b) who is able to assist the law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons, and written confirmation to this effect is received from the Inspector-General of the Namibian Police or a person authorised by the Inspector-General.
- (2) The temporary residence permit contemplated in subsection (1) may be -
- (a) extended for periods prescribed by the Minister responsible for immigration and home affairs; and
 - (b) cancelled if the requirements prescribed by the Minister responsible for immigration and home affairs are not complied with.

Prohibition of criminal prosecution against victims of trafficking

16. Criminal prosecution may not be instituted against a victim of trafficking, for -

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- (a) entering or remaining in Namibia in contravention of the Immigration Control Act;
- (b) possessing any fabricated or falsified identity document, travel document or other document used for the facilitation of movement across borders; and
- (c) being involved in an illegal activity to the extent that he or she has been compelled to do so,

as a direct result of his or her situation as a victim of trafficking.

Repatriation of foreign victims from Namibia

17. The Minister responsible for immigration and home affairs may not repatriate a foreign victim to his or her country of origin or the country from where he or she has been trafficked, without giving due consideration to the -

- (a) best interests of the child standard set out in section 3 of the Child Care and Protection Act, in a case of a foreign victim who is a child;
- (b) safety of the victim during the repatriation process;
- (c) availability and suitability of care arrangements and the safety of the victim in the country to which the person is to be repatriated; and
- (d) possibility that the victim might be harmed, killed or trafficked again.

Repatriation of victims of trafficking to Namibia

18. With due regard to the safety of a person and without delay -

- (a) the Minister responsible for international relations must facilitate the return of a person who is a -
 - (i) Namibian citizen or a permanent resident of Namibia; and
 - (ii) victim of trafficking and in a foreign country;
- (b) the Minister responsible for immigration and home affairs must -
 - (i) facilitate the return of a person contemplated in paragraph (a) and issue the necessary identification documents and travel documents or other authorisations to enable the person to travel to and enter Namibia;
 - (ii) at the request of another State that is a party to the trafficking in persons protocol or to an international agreement binding on Namibia, relating to trafficking in persons, verify that the victim of trafficking is a Namibian citizen or a permanent resident of Namibia; and
 - (iii) if the victim of trafficking is a child, on the victim's entry into Namibia refer the child to a designated social worker who must act in accordance with the provisions of section 139 of the Child Care and Protection Act and who may, if required in the circumstances, place the child in temporary safe care pending the outcome of the investigation referred to in that section.

CHAPTER 4 PROVISIONS RELATING TO CHILDREN WHO ARE VICTIMS OF TRAFFICKING

Assistance to children who are victims of trafficking

19. (1) The Minister must, if it is in the best interests of the child, authorise an adult at State expense to escort the child who is a victim of trafficking from the place where the child was found to the place from which the child is suspected to have been trafficked or if that is not appropriate or safe, to any other suitable place, including a place where the child's parent or care-giver resides.

(2) The Minister may not act in terms of subsection (1), if the Minister is satisfied that the parent, guardian, care-giver or other person, who has parental responsibilities and rights in respect of the child who is a victim of trafficking, has the financial means to travel to the place where the child is in order to escort the child back.

[The comma after the phrase "other person" is superfluous.]

(3) A child who is a victim of child trafficking must, pending the completion of an investigation contemplated in section 139 of the Child Care and Protection Act, be placed in temporary safe care or in the care of a person or organisation designated in terms of section 13.

(4) The placement of a child who is a victim of trafficking in temporary safe care or in the care of a person or organisation contemplated in subsection (3) without an order of the children's court does not disqualify such child from any state grant contemplated in section 16 of the Child Care and Protection Act, which is payable in respect of children in temporary safe care.

[The comma after the phrase "the Child Care and Protection Act" is superfluous.]

Provision of health care and education services to children who are foreign victims

20. A foreign victim who is a child is entitled to the same services, including public health care and education services, as any other child in Namibia.

Children who are foreign victims and found in Namibia

21. (1) If, after an investigation as contemplated in section 139 of the Child Care and Protection Act, a child who is a foreign victim and is illegally present in Namibia is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Namibia Refugees (Recognition and Control) Act.

(2) A finding in terms of section 139 of the Child Care and Protection Act that a child who is a foreign victim and is illegally present in Namibia is a child in need of protective services serves as authorisation for allowing the child to remain in Namibia for the duration of the children's court order.

Trafficking of child by parent, guardian or by person with parental responsibilities and rights

22. If a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may, in addition to any other action that may be taken in terms of this Act -

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- (a) suspend any or all parental responsibilities and rights of that parent, guardian or other person in terms of section 237 of the Child Care and Protection Act; and
- (b) place that child in temporary safe care or in the care of a person or organisation designated in terms of section 13, pending an inquiry by a children's court into whether the child is in need of protective services in terms of the Child Care and Protection Act.

CHAPTER 5
ENFORCEMENT PROVISIONS

Jurisdiction of magistrate's court

23. Despite anything to the contrary in any other law, a regional magistrate's court has jurisdiction to impose any penalty or may make an order that may be imposed or made in respect of an offence under this Act.

[The word "an" in the phrase "may make an order" should be "any".]

Extra territorial jurisdiction

24. (1) The High Court of Namibia has jurisdiction, in respect of an act committed outside Namibia which would have constituted an offence under this Act had it been committed in Namibia, regardless of whether or not the act constitutes an offence at the place of its commission, if the person to be charged -

- (a) is a citizen of Namibia;
- (b) is ordinarily resident in Namibia;
- (c) has committed the offence against a citizen of Namibia or a person who is ordinarily resident in Namibia;
- (d) is, after the commission of the offence, present in the territory of Namibia or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in Namibia;
- (e) is, for any reason, not extradited by Namibia or if there is no application to extradite that person; or
- (f) is a juristic person or a partnership registered in terms of a law in Namibia.

(2) A person who commits an offence contemplated in subsection (1) is liable on conviction to the penalty provided for in this Act for that offence.

(3) Subject to subsection (1), the Prosecutor-General must in writing designate an appropriate court in which to conduct a prosecution against a person accused of having committed an offence under this Act in a country outside Namibia as provided for in that subsection.

(4) For the purposes of determining the jurisdiction of a court to try an offence, the offence is regarded to have been committed at the -

- (a) place where the accused person is ordinarily resident; or
- (b) principal place of business of the accused person.

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(5) The institution of prosecution in terms of this section must be authorised in writing by the Prosecutor General.

Factors to be considered in sentencing

25. If a person is convicted of any offence under this Act, the court that imposes the sentence must consider, but is not limited to, the following aggravating factors -

- (a) the significance of the role of the convicted person in the trafficking process;
- (b) previous convictions relating to the offence of trafficking in persons or related offences;
- (c) whether the convicted person caused the victim of trafficking to become addicted to the use of a dependence-producing substance;
- (d) the age of the victim of trafficking;
- (e) the conditions in which the victim of trafficking was kept;
- (f) whether the victim of trafficking was held captive for any period;
- (g) whether the victim of trafficking suffered abuse and the extent of the abuse;
- (h) the physical and psychological effects the abuse had on the victim of trafficking;
- (i) whether the offence formed part of organised crime contemplated in the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);
- (j) the nature of the relationship between the victim and the convicted person;
- (k) the state of the mental health of the victim of trafficking; and
- (l) whether the victim of trafficking had any physical disability.

Compensation

26. The court that has convicted a trafficker may, at the request of the victim of trafficking or on its own accord order the convicted trafficker to compensate the victim of trafficking for any -

[The word “trafficking” is misspelt in the *Government Gazette*, as reproduced above.
The word “it’s” in the phrase “it’s own accord” should be “its”.]

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

CHAPTER 6
GENERAL PROVISIONS

Regulations

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27. (1) The Minister, after consultation with the Minister responsible for home affairs and immigration and the Minister responsible for international relations, where it relates to powers exercised or duties performed by them under a law, may make regulations relating to -

- (a) the assessment and determination of a person as a victim of trafficking;
 - (b) the revoking of a determination of a person as a victim of trafficking;
 - (c) the criteria for the designation of a person or an organisation under section 13 and the cancellation of such a designation;
 - (d) the powers and duties of person or organisation designated under section 13;
 - (e) any other matter required or permitted to be prescribed under this Act; and
 - (f) any other incidental administrative or procedural matter that is necessary to be prescribed for the proper implementation or administration of this Act.
- (2) Regulations made under subsection (1) may -
- (a) create an offence for any contravention of a regulation or a failure to comply with a provision of a regulation; and
 - (b) prescribe penalties in respect of an offence contemplated in paragraph (a) may not exceeding a fine of N\$20 000 or imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.

[The words “may” and “to” in paragraph (b) are superfluous.]

Amendment of laws

28. (1) The Child Care and Protection Act, 2015 (Act No. 3 of 2015), is amended by -

[The comma after the bracketed phrase is superfluous.]

- (a) the deletion of the definition of “victim of child trafficking”;
- (b) the deletion of the definition of the “United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”;
- (c) the repeal of sections 200, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218 and 219; and
- (d) the deletion of Schedule 4.

(2) Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) is amended by -

[The word “The” should appear at the beginning of subsection (2).]

- (a) the deletion of the words “smuggling in migrations” and “trafficking in persons” in the Long Title;
- (b) the deletion of the following definitions in section 1 -
 - (i) “smuggling of migrants”; and

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- (ii) “trafficking in persons”.
- (c) the repeal of sections 15 and 16.

Short title and commencement

29. (1) This Act is called the Combating of Trafficking in Persons Act, 2018, and comes into operation on the date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

*

SCHEDULE

TEXT OF THE UNITED NATIONS PROTOCOL TO PREVENT
TRAFFICKING IN PERSONS

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

[The text of this Schedule was checked against the text of the Protocol as it appears at
<https://treaties.un.org/doc/Publication/UNTS/Volume%202237/v2237.pdf>.
The word “against” in the title of the “United Nations Convention against
Transnational Organized Crime” should not be capitalised.]

PREAMBLE

The States Parties to this Protocol,

DECLARING that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

TAKING INTO ACCOUNT the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

CONCERNED that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

RECALLING General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children, Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

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[The text beginning with the word “Convinced” should constitute a separate paragraph, formatted like the other paragraphs in the Preamble.]

HAVE AGREED AS FOLLOWS:

[Throughout the Protocol as it appears in the UN version, the headings of each part do not list the articles contained in that part, the word “Article” is not capitalised where it appears in the text (as opposed to in a heading, the first words of each lettered paragraph are capitalised (not just those of the first such paragraph), paragraph numbers appear without brackets and double quotes are used instead of single quotes. The Protocol is reproduced here as it appears in the *Government Gazette*.]

I**GENERAL PROVISIONS (Articles 1-5)****Article 1: Relation with the United Nations Convention against Transnational Organized Crime**

(1) This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

(2) The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

(3) The offences established in accordance with Article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2: Statement of purpose

The purposes of this Protocol are:

- (a) to prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) to promote cooperation among States Parties in order to meet those objectives.

Article 3: Use of terms

For the purposes of this Protocol:

- (a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of 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;
- (b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

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- (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) ‘child’ shall mean any person under eighteen years of age.

Article 4: Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with Article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5: Criminalization

(1) Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally.

(2) Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph (1) of this article;
- (b) participating as an accomplice in an offence established in accordance with paragraph (1) of this article; and
- (c) organizing or directing other persons to commit an offence established in accordance with paragraph (1) of this article.

II**PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS (Articles 6-8)****Article 6: Assistance to and protection of victims of trafficking in persons**

(1) In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

(2) Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- (a) Information on relevant court and administrative proceedings; and

[The word “and” does not appear at the end of this paragraph in the UN version.]

- (b) assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

(3) Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate

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cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) medical, psychological and material assistance; and
- (d) employment, educational and training opportunities.

(4) Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

(5) Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

(6) Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7: Status of victims of trafficking in persons in receiving States

(1) In addition to taking measures pursuant to Article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

(2) In implementing the provision contained in paragraph (1) of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8: Repatriation of victims of trafficking in persons

(1) The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

(2) When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

(3) At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

(4) In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

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(5) This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

(6) This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III**PREVENTION, COOPERATION AND OTHER MEASURES (Articles 9-13)****Article 9: Prevention of trafficking in persons**

(1) States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) to protect victims of trafficking in persons, especially women and children, from revictimization.

(2) States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

(3) Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

(4) States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

(5) States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10: Information exchange and training

(1) Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b) the types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes

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and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

(2) States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

(3) A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11: Border measures

(1) Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

(2) Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with Article 5 of this Protocol.

(3) Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

(4) Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph (3) of this article.

(5) Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

(6) Without prejudice to Article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12: Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) to ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13: Legitimacy and validity of documents

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At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV**FINAL PROVISIONS (Articles 14-20)****Article 14: Saving clause**

(1) Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

(2) The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15: Settlement of disputes

(1) State Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

(2) Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

(3) Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph (2) of this article. The other States Parties shall not be bound by paragraph (2) of this article with respect to any State Party that has made such a reservation.

(4) Any State Party that has made a reservation in accordance with paragraph (3) of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16: Signature, ratification, acceptance, approval and accession

(1) This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

(2) This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph (1) of this article.

(3) This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument

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of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

(4) This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17: Entry into force

(1) This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

(2) For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph (1) of this article, whichever is the later.

Article 18: Amendment

(1) After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

(2) Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

(3) An amendment adopted in accordance with paragraph (1) of this article is subject to ratification, acceptance or approval by States Parties.

(4) An amendment adopted in accordance with paragraph (1) of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

(5) When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

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Article 19: Denunciation

(1) A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

(2) A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20: Depositary and languages

(1) The Secretary-General of the United Nations is designated depositary of this Protocol.

(2) The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.