

FACT SHEET

J v. The Republic of Namibia



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Communication 734/2019
African Commission on Human
and Peoples' Rights



Introduction

In a decision adopted by the African Commission on Human and People's Rights (the African Commission) in the 78th ordinary session held on 23 February to 8 March 2024 and communicated on the 20 June, 2025, the African Commission found the Republic of Namibia, in violation of Articles 2, 5 and 18(3) of the African Charter on Human and People's Rights (African Charter) as well as Article 2 and 4(2)(g) of the Protocol on the Rights of Women in Africa (Maputo Protocol). The Initiative for Strategic Litigation in Africa (ISLA) and Kenya Legal and Ethics Network on HIV and AIDS (KELIN) the authors of the communication had filed the individual complainant on 25 April 2019 on behalf of the victim – J, against the Republic of Namibia seeking an enforcement of the Respondent State's human rights obligation to act with due diligence to prevent trafficking in person, to investigate and prosecute traffickers and to provide remedies for J as a victim of human trafficking for the purposes of sexual exploitation. This is a landmark decision from the Commission on trafficking in persons and an articulation of the substantive equality approach that recognises violence against women is a form of discrimination.

A close-up photograph of a brown leather garment, possibly a vest or jacket, featuring a white drawstring closure. A small, rectangular white tag is attached to the string, displaying the text "NOT 4 SALE" in a hand-drawn, black, uppercase font. The tag is positioned diagonally across the lower right portion of the frame. The leather has a visible grain and is illuminated by warm, natural light, creating soft shadows and highlights. The background is blurred, showing hints of green foliage.

NOT
4
SALE

Background Information

In 2022, 61% of the total detected victims of trafficking globally were women and girls, with girls comprising 22% of the group, and most of them being trafficked for sexual exploitation and other forms of exploitation including forced labour¹. The 2024 Global Report on Trafficking in Persons² indicated that there was a 25% rise in the global detection of victims in 2022 alone with several forms of trafficking on the rise including forced criminality, child trafficking and an alarming increase in the trafficking of girls for sexual exploitation. Geographically, Africa is the most affected region with a third of detected cross-border victims of trafficking involving citizens of African countries³. This increase in human trafficking occurs during a time when there are several international, regional and national instruments criminalizing human trafficking, indicating a need to recalibrate the implementation of these instruments towards prevention.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “Palermo Protocol”) is the principal legally binding global instrument

1 UNODC, UNITED NATIONS PUBLICATION Title: Global Report on Trafficking in Persons 2024 (2024) <<https://www.unodc.org/unodc/data-and-analysis/glotip.html>>.

2 ibid 30.

3 ibid 37–40.

to combat human trafficking; it enshrines the undertakings of states to prevent and combat trafficking in persons, paying particular attention to women and children. However, in the more than two decades since the Palermo Protocol came into force, there has been a steady increase in the number of trafficking cases worldwide with women and girls being the most affected. Although the Protocol succeeded in criminalizing trafficking and there has been an increase in the number of convictions for human trafficking there has been little progress on prevention which stems from not prioritizing addressing the root causes and drivers of trafficking⁴.

In addition to the Palermo Protocol, the obligation of states to protect women from violence, including human trafficking, is set out in other international, regional and national instruments including Article 5 of the African Charter on Human and Peoples' Rights, Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) , the African Charter on the Rights and Welfare of the Child and various national statutes including Ghana's Human Trafficking Act of 2005 and Kenya's Counter-Trafficking in Persons Act of 2010.

Some of the factors that make women and girls more

4 ECPAT UK, '20th Anniversary of the Palermo Protocol' (2020) <[https://www.ecpat.org.uk/blog/20th-anniversary-palermo-protocol#:~:text=However%2C the lack of attention,to protection%2C support and redress](https://www.ecpat.org.uk/blog/20th-anniversary-palermo-protocol#:~:text=However%2C%20the%20lack%20of%20attention,to%20protection%2C%20support%20and%20redress)> accessed 29 October 2025.

vulnerable to trafficking include disempowerment, social isolation, the feminization of poverty and gender roles and discrimination that disproportionately undermine women's access to job opportunities and these vulnerabilities are exacerbated by things like natural disasters, conflict and political turmoil⁵. The internet has also revolutionised human trafficking⁶ making it easier for traffickers to adapt their methods to fit the circumstances, as a result, traffickers have been able to use the internet to profile, identify and target potential victims, usually by posting fake job offers and promising work opportunities in far off lands. Additionally, the Covid-19 pandemic which, in addition to augmenting the already existing vulnerabilities of women and children, left room for human traffickers to innovate and refine ways of conducting their activities through online channels⁷.

It is evident that the existing legal framework falls short of meeting its objective to prevent human trafficking by addressing the systemic and policy gaps that create the vulnerabilities which expose women and girls to the risk of human trafficking. The case of *J v The Republic of*

5 UNODC, 'An Introduction to Human Trafficking: Vulnerability, Impact and Action' [2008] United Nations Office on Drugs and Crime 1.

6 'The Internet Has Revolutionized Human Trafficking and Young People Are Especially Vulnerable' 2.

7 Johanna Plöen, 'In the Shadow of the Pandemic: Exploring the Intersection of Crisis and Human Trafficking in Kenya A Qualitative Case Study on the Effects of COVID-19 on Vulnerabilities, Emerging Trends, and NGO Responses' (2023) 26–27.

Namibia, which we will discuss below, is a result of these shortcomings and demonstrates how human trafficking is a form of gender based violence, confirms the ways in which traffickers use online channels to target vulnerable women and highlights the obligations of states to protect of women and girls from trafficking which is a form of gender-based violence.



Facts of the Case

In May, 2017, J, a Kenyan national, responded to a Facebook job advertisement and filed an application for a job in Namibia. She was shortlisted and offered the position shortly thereafter, being informed that her travel to Namibia would be facilitated by the employer. J travelled through Kenya, Tanzania, Zambia and finally arrived in Namibia, at which point the driver retained her passport. Over the next three months, J was detained and subjected to various acts of physical abuse, she was forcibly injected and drugged with unknown substances and sexually exploited. She eventually escaped from her captors and reported to a nearby police station. At the police station, she was interrogated, threatened and held in custody for four weeks being accused of being an illegal immigrant and denied access to consular services. Only upon the publication of her ordeal by the Namibia Broadcasting Corporation was she released and safely exited the country. She filed a complaint at the African Commission in April, 2019.



Decision of the African Commission

The African Commission in its decision found that Namibia not only failed to conduct an effective investigation, prosecute and punish J's perpetrators, but also through its agents participated in conduct that further victimised her. The decision details the legal standard for a prompt, impartial and effective investigation as required by various regional and international framework and concluded that the State failed to meet this standard. As a consequence, the African Commission found that Namibia violated the right to human dignity and the right to freedom from cruel, inhuman and degrading treatment.

The African Commission conducted an analysis of substantive equality and impeached its reliance on the comparator test in earlier decisions in the determination of the right to equality and non-discrimination. The African Commission found merit in the substantive equality approach taking into account the intersecting factors and vulnerabilities and the resulting disproportionate impact of violence and trafficking in persons on women. The African Commission concluded that the Namibia had violated J's right to equality and non-discrimination.

Orders

In its decision, the African Commission directed Namibia to take the following measures:

- Expeditiously investigate, prosecute and punish the perpetrators;
- To adopt legislative measures to address trafficking in persons particularly of women for sexual exploitation and to protect women from violence;
- To hear arguments on the financial compensation due to J; and
- Finally report to the African Commission any measures taken to implement the decision within 180 days.



Importance of this Case

The Role of the State

This case highlights the vulnerability of women to trafficking for the purpose of sexual exploitation and the dual responsibility and obligation of the State to protect women from violence and when it occurs to adequately respond and provide remedies for the victims including repatriation and reintegration of victims.

In trafficking cases, States are required to correctly identify victims and not subject them to further re-victimisation by treating them as illegal immigrants and subjecting them to the criminal justice system. The various state agencies and stakeholders must be trained to utilise the human rights based and victim-centred approach to ensure justice for victims.

The State's due diligence obligation to investigate, prosecute and punish all forms of violence against women must be exercised in accordance with international and regional obligations.

Feminist Jurisprudence

The decision of the African Commission and its analysis of violence against women as discrimination is critical in addressing the root causes of violence and cementing the role of the State in eliminating all forms of violence against women. This jurisprudence will be critical in upholding the rights of women before national courts and other regional mechanisms.

Call to Action

- i. States must adhere to their due diligence obligation to protect women from all forms of violence and adequately respond when it occurs including conducting thorough investigations, prosecution and conviction of perpetrators.
- ii. States must train all related and implicated agencies to adopt a human rights approach to combating trafficking.
- iii. States must recognise online platforms as emerging sites of grave violations and recruitment for violence against women and ensure adequate mechanisms for protection of women and girls.