



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### List of issues in relation to the second periodic report of Namibia\*

##### Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. In relation to the Committee's previous concluding observations (see CCPR/CO/81/NAM, para. 6), please elaborate on the status of the Covenant vis-à-vis domestic law. With reference to paragraph 83 of the State party's report (CCPR/C/NAM/2), please inform the Committee of whether provisions of the Covenant have been directly or indirectly invoked before the courts and, if so, please provide detailed information on these cases. Please also provide updated information about any steps taken to comply with the Committee's previous recommendations to establish a mechanism to implement the Committee's Views adopted under the Optional Protocol (see CCPR/CO/81/NAM, para.8).

2. Please elaborate on the functions of the Office of the Ombudsman and on its mandate, including whether and how far the Office can follow up on individual complaints. With reference to the Committee's previous concluding observations (para. 7) and paragraph 14 of the State party's report, please provide updated information on the proposed amendments to the Ombudsman Act, 1990 (Act. No. 7 of 1990), and indicate the steps taken, if any, to adopt those amendments.

##### Non-discrimination, equal rights of men and women and the right to life (arts. 2, 3, 6 and 26)

3. Please indicate whether the State party has undertaken a review of its legislative framework with a view to eliminating discriminatory legal provisions and to ensuring that a comprehensive non-discrimination regime is in place. Please respond to allegations that the prohibitions against discrimination are not effectively enforced and that women in particular are faced with discrimination in areas such as credit, pay, owning and/or managing businesses, education and housing.

4. Please indicate the measures taken to encourage the registration of customary marriages, as requested by the Committee in its previous concluding observations (para. 9). In view of information provided in paragraph 20 of the State party's report, please specify the measures taken to eliminate legal and cultural discrimination faced by women married under customary law. Please provide the Committee with updated information on the status of the enactment of the Bill on Recognition of Customary Law Marriages. In the absence of

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\* Adopted by the Committee at its 114th session (29 June-24 July 2015).



any enactment of the bill, please report any measures taken to combat polygamy. Please specify whether and how implementation of section 26 (2) of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) is monitored, particularly in the light of reports that traditional practices that permit family members to confiscate the property of deceased men from their widows and children continue. Please also indicate whether there is any intention to outlaw Native Administration Proclamation 15 of 1928, still implemented in northern Namibia, and according to which one is automatically married out of community of property unless a 30-day notice is given expressing the wish to be married differently, and which has frequently led to the disinheritance of widows.

5. The ruling *Lotto Frans v. Inge Paschke and others*, case No. (T) I 1548/2005, declares it unconstitutional to prohibit children born out of wedlock from inheriting and indicates that “by design or result, the social stigma which attached to adulterous and incestuous children was transferred to children born out of wedlock”. With reference to this ruling, please elaborate on the treatment of children born out of adulterous or incestuous relationships, in particular on whether they experience discrimination in inheritance and which measures are in place to combat de jure and de facto discrimination and stigma.

6. Please provide information on steps taken to combat and prevent societal stigma and discrimination against persons living with HIV/AIDS, including in employment. Taking into consideration that women are disproportionately affected by the pandemic, both as patients and as caregivers for HIV-positive persons, please indicate whether any specific measures for protecting and supporting women are in place. Furthermore, please comment on reports that the practice of forced or coerced sterilization of women living with HIV/AIDS is ongoing, and provide information on the measures taken to ensure that the guidelines regarding informed consent set out by the courts in *LM and Others v. Government of the Republic of Namibia* are always implemented. Furthermore, in relation to the Committee’s previous concluding observations (para. 10) and the information provided in paragraph 32 of the State party’s report, please describe the steps taken to further increase access to antiretroviral treatment.

7. Please provide detailed information on the procedure to be followed in order to access abortion, and comment on reports according to which obtaining approval for abortion requires cumbersome administrative procedures. Please also comment on reports according to which a high number of girls and women resort to unsafe abortions and on the frequent incidents of killings or abandonment of babies and infants. Please elaborate on the measures taken to provide support to young and/or single mothers and protect them from discrimination and stigmatization. In view of the above, please indicate whether there is any intention to amend the law on abortion to facilitate access to the same. Furthermore, please indicate whether there are plans to legalize access to contraceptives by persons under 18 years of age and please describe measures to disseminate information about contraception methods and to promote sexual and reproductive health education among adolescent boys and girls.

8. With reference to the Committee’s previous concluding observations (para. 22), please indicate whether any legal amendments are intended to provide for protection against discrimination for lesbian, gay, bisexual and transgender persons. In particular, please indicate whether there is any intention to remove the “anti-sodomy” law, to reintroduce the prohibition of discrimination in employment based on sexual orientation or to include the protection of persons living in same-sex relationships in the Combating of Domestic Violence Act. Please respond to allegations that same-sex relationships are explicitly excluded from important legal provisions. Please also comment on allegations according to which many human rights violations against lesbian, gay, bisexual and transgender persons go unrecorded or are not prosecuted, such as the use of “corrective rape” against lesbian women, the disowning of lesbian, gay, bisexual and transgender

children by their families and the beating of lesbian, gay, bisexual and transgender persons. In this regard, please also respond to allegations that, in the northern area of Oshiwambo, police have refused to prosecute the assault of a transgender woman by a group of men. Please describe which laws are in place to protect lesbian, gay, bisexual and transgender persons against hate crimes and which efforts the State party has taken to combat social stigmatization of persons on the basis of sexual orientation or gender identity.

9. Please comment on reports according to which persons with disabilities are frequently excluded from society and deprived of their rights, including freedom of movement, the right to vote, access to justice, freedom to choose medical treatments, access to mainstream education and employment. The Committee would appreciate receiving detailed information on programmes and policies currently in place to provide support to persons with disabilities, and the resources allocated to these. In this regard, please also indicate whether any specific programmes and policies are currently in place to inform persons with disabilities on their rights and to provide them with support in exercising them. Please also elaborate on the measures taken to protect persons with disabilities from discrimination.

10. Please inform the Committee on the number of women currently employed in the public sector, including the number in high-level decision-making positions. Please provide detailed information on the differences in the employment rate of men and women, and the gender wage gap.

#### **Violence against women, including domestic violence (arts. 2, 3, 6, 7 and 26)**

11. Taking into account the results of the Namibia Demographic and Health Survey 2013, according to which 40 per cent of men and 35 per cent of women in Namibia believe it to be justified for a woman to be slapped by her partner for reasons such as burning the food, going out without permission or refusing to have sex, please inform the Committee on any measures taken to increase enforcement of the Combating of Domestic Violence Act. Please clarify whether the law provides for any mitigating excuses for violence taking place within a domestic relationship, and indicate whether there is any intention to prohibit the practice of paying *lobola*, which is used as justification to beat and mistreat wives. Please indicate the measures taken to increase the expertise among law enforcement officials, judges and prosecutors in recognizing victims of domestic violence and addressing the issue. Given that only magistrates may issue protection orders, please indicate whether any measures are being taken to ensure that each village, including areas where indigenous communities live, has a sitting magistrate or is within a reasonable distance of a sitting magistrate. Please indicate whether any steps have been taken to provide for the application of a protection order outside court hours or court days. Please inform the Committee on measures taken to combat so-called “passion killings”.

12. Please inform the Committee on whether any measures have been taken to combat harmful practices against women and girls carried out in certain parts of the country, such as coercing girls to participate in their initiation into womanhood (*sikenge*); preparing girls for sex and testing their sexual readiness by making them have sex with their grandfather, uncle or brother (*kutamunwa*), including while they are asleep (*mulaleka*); stretching the labia minora (*malebe*); cutting and scarring young women’s bodies (*kupaza/lipazo*); drying out the vagina for “dry sex” (*kuomisa busali/kukonyiwa inge ku omile*); forcing a widow to have sex with one of her dead husband’s relatives during “widow cleansing” (*kufwamena/kahoma*); marrying a widow to the brother of her deceased husband; and removing growths (*ku zwisa sijabana*). Please indicate whether these acts are explicitly prohibited and criminalized and tried in court (both civil and traditional courts). Please comment on reports according to which certain forms of female genital mutilation are

occasionally practiced and indicate whether there is any intention to fully prohibit and criminalize female genital mutilation.

13. In relation to information provided in paragraph 63 of the State party's report, please describe the measures taken to investigate allegations of rape. Also according to this information, a significant number of rape victims withdraw their court cases to receive compensation from the accused, because they succumb to family pressure, shame and threats or because they are discouraged by the length of time involved in prosecuting alleged perpetrators. Therefore, please indicate the measures in place to provide support and protection to victims of rape and domestic violence, including increasing the number of shelters and protection units for women and children. Please provide statistical data on sentencing in rape cases, disaggregated by the number of cases heard by court, the type of court (civil or traditional) hearing the case, the sentences imposed, the number of defendants acquitted and the number of rape allegations withdrawn. Please elaborate on the conditions that have to be met for an employee who leaves his or her job owing to sexual harassment to be entitled to "remedies available to an employee who has been unfairly dismissed", and indicate the number of cases where these remedies have been awarded.

**Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6 and 7)**

14. Please provide updated information on the content and the adoption of the bill on the crime of torture and please indicate the bill's definition of torture. Please inform the Committee about cases where a court has declared evidence inadmissible according to article 12 (1) f of the Constitution. Please comment on reports alleging the use of excessive force as well as unlawful or arbitrary killings by the police, and on reports according to which members of the police regularly detain sex workers and coerce them to have sex with them before release. Please indicate whether there have been any cases where a police officer has been convicted of torture, including rape and/or murder. With reference to paragraph 41 of the State party's report, please specify the safeguards in place to ensure the independence of the Police Disciplinary Unit, and, with reference to paragraph 144 of the report, please describe the safeguards in place to ensure the independence of the Internal Investigation Directorate of the Police.

**Elimination of slavery, servitude and forced labour and measures to protect minors (arts. 8 and 24)**

15. With reference to paragraph 130 of the State party's report, please inform the Committee on measures taken to prevent and punish the use of child labour, and provide statistical information on child labour. Please also clarify whether children between 16 and 18 may legally work under harmful and/or hazardous conditions. Please explain the reason for the lack of any institution mandated to implement and enforce child labour laws and indicate whether any legal reforms are intended to facilitate access by labour inspectors to private farms. Furthermore, please comment on reports according to which farm workers on communal farms and domestic workers, mainly women and children, are frequently subjected to insufficient compensation and prolonged working hours as well as corporal punishment. Please comment on reports that the State party is a country of origin and destination for children and women subjected to forced labour and trafficking, and report on the current anti-trafficking legislation and on the measures in place to improve early identification of, as well as assistance to, victims of trafficking and other forms of related exploitation, and please indicate whether any trafficking offenders have been convicted.

**Right to liberty and security of person, right to a fair trial and independence of the judiciary (arts. 9 and 14)**

16. Please indicate the average length of pretrial detention and describe the measures taken to reduce its usage. In view of the State party's indication, in paragraphs 36, 40, 131 and 134-137 of its report, that every arrested or detained person must be brought before a magistrate or judicial officer within 48 hours where possible, please inform the State party of cases where it has not been possible to respect the 48-hour rule and please elaborate on the measures taken to ensure respect of the 48-hour rule at all times. Please also indicate whether any measures are envisaged, including an administration of justice policy, to combat the practical barriers to the enforcement of the right to appeal or review, such as delays in producing the transcripts of trials or undue delays in preparing the appeal/review records of proceedings by clerks. With reference to paragraph 146 of the report, please indicate whether the policy of separating pretrial detainees from convicted detainees is systematically implemented, and provide information on steps taken to promote the use of alternatives to pretrial detention such as protective measures, bail or electronic bracelets. Furthermore, please specify the number of persons currently detained under the Prevention and Combating of Terrorist Activities Act. With reference to paragraph 141 of the report, please provide detailed information on cases of unlawful arrests and/or imprisonments and compensation granted.

**Treatment of persons deprived of their liberty (art. 10)**

17. Please comment on the reportedly very poor prison conditions, in particular in pretrial holding cells, where detainees are allegedly faced with overcrowding, poor sanitation, the prevalence of tuberculosis and inadequate on-site medical assistance. Please also indicate whether any programmes are in place to prevent and address HIV in prisons, including the mandatory distribution of condoms, and whether there are any plans to introduce new programmes. With reference to paragraph 143 of the State party's report, please indicate the frequency of prison inspections by visiting justices. Please provide detailed information on the complaints mechanism and safeguards in place to ensure that complainants do not risk being subjected to reprisals. Please clarify whether complaints by inmates are inquired into solely on the occasion of prison inspections by visiting justices. Also with reference to paragraph 143 of the report, please indicate whether the Correctional Service Act, 2012 (Act No. 9 of 2012), replacing the Prisons Act, provides for any differences regarding prison monitoring and complaints mechanism, and indicate the reason why the Correctional Service Act has not yet been implemented. With reference to the Committee's previous concluding observations (para. 14) and paragraphs 42 and 144 of the report, please provide further detailed information on the mandate of the Correctional Inspector, how he or she will be chosen and the safeguards in place to ensure his or her independence. Please indicate whether any steps have been taken towards ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Please inform the Committee of any plans to develop alternatives to detention and whether there are any programmes to educate judges and prosecutors about alternatives to detention.

**Refugees and asylum seekers (arts. 6, 7 and 13)**

18. Please respond to reports according to which the State party's Commissioner for Refugees, Nkrumah Mushelenga, stated to the press that "domestic refugee law does not have a provision granting refugee status for being gay". How does the State party ensure respect for the principle of non-refoulement where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated under articles 6 and 7 of the Covenant? Please inform the Committee whether the ruling in *Zhu v. Minister of Home Affairs and Another*, case No. 2004 NR 170 (HC), is systematically

complied with. Please explain to the Committee the reason for requiring asylum seekers and refugees to reside in the Osire refugee settlement and indicate whether any steps have been taken towards providing them with full liberty of movement.

**Fair trial and due process (art. 14)**

19. With reference to paragraph 169 of the State party's report, please provide detailed information on traditional courts and cases heard by them. In view of the indication in paragraph 169 of the report that traditional courts adjudicate for compensation of the victims only, please clarify whether offenders receive any punishment. Please indicate whether there is a monitoring system in place to ensure that traditional courts systematically apply all applicable fair trial and due process laws and do not apply customary law that conflicts with the Constitution, other statutory laws or the Covenant. In relation to the information provided in paragraph 175 of the report, please provide information on the criteria for eligibility for legal aid, as well as on the functioning and financing of the legal aid system. Furthermore, please respond to allegations that many of the detainees in the Caprivi high treason case are prisoners of conscience, and explain how the "common purpose doctrine" is compatible with article 14 of the Covenant.

**Right to privacy (art. 17)**

20. In relation to paragraph 185 of the State party's report, please provide updated information on the establishment of interception centres provided for in part 6 of the Communications Act, 2009 (Act No 8 of 2009), and provide detailed information on the gathering and holding of private information under the Act or under any other laws. Please also indicate whether and following what procedure individuals have the right to ascertain what personal data concerning them is stored and for what purpose, and to request rectification or elimination of such data. Please indicate the remedies available to complainants of a violation under article 17 in such contexts.

**Protection of the family, the right to marriage and equality of the spouses (art. 23)**

21. With reference to the information provided in paragraph 211 of the State party's report, please describe the safeguards in place to prevent child and forced marriages. Please provide detailed information on the procedure to be followed to obtain a divorce and indicate the grounds upon which a divorce may be granted. Please also elaborate on the amendments that might be introduced to the current divorce law according to proposed reforms. In view of the information provided in paragraphs 205 and 207 of the report, please comment on reports according to which the current law may trap spouses in dangerous marriages. Furthermore, with reference to paragraph 207 of the report, please clarify whether the divorce act does not apply to marriages of certain religions and traditional marriages. In this regard, please specify the difference, if any, between a "traditional" and a "customary" marriage. Please also respond to allegations that in some communities the size of a girl's or a woman's labia can be cited as a valid reason for divorce.

**Freedom of expression, peaceful assembly and freedom of association (arts. 19, 21 and 22)**

22. Please clarify whether research projects are subject to authorization and, if so, please explain how this is compatible with article 19 of the Covenant. Please indicate whether there is any intention to withdraw the ban on political events on campuses of all government institutions of higher learning. Please comment on reports indicating that journalists working for State-owned media practice self-censorship, that there have been incidences of intimidation of journalists by members of the South West Africa People's

Organization, a political party, and that freedom of expression may be impacted by political-party affiliation. In this regard, please elaborate on any efforts the State party has undertaken to ensure freedom of expression and freedom of the press.

#### **Protection of children (art. 24)**

23. With reference to the Committee's previous concluding observations (para. 19) and paragraph 56 of the State party's report, please provide updated information on the enactment of the Child Justice Bill. Please also provide updated information on the current status of the draft Child Care and Protection Bill. Please provide the Committee with further detailed information on the content of these bills and on the human, technical and financial resources that will be allocated to their implementation. In view of the indication in paragraph 56 of the report that the bill "revives a presumption that a child under ten years of age cannot legally be prosecuted for an offence", please clarify whether there have been cases of children under 10 years of age who have been prosecuted for an offence. Please comment on reports that juvenile detainees share cells with adults and specify the number of special prison facilities for juveniles and the number of juveniles currently detained. Please also indicate whether the constitutional protection against detention under the age of 16 is always respected. Furthermore, please inform the Committee whether any steps have been taken to declare corporal punishment illegal in all settings, and to disseminate information on the harmful effects of corporal punishment and promote non-violent forms of discipline. Please respond to allegations that teachers in regions bordering Angola, Botswana, Zambia and Zimbabwe sometimes refuse to teach children who cannot provide proof of citizenship. Please also respond to allegations that teachers have turned away teenage mothers who wished to return to school. Furthermore, please provide information on any measures taken to ensure that every child is registered and receives citizenship.

24. In view of the significant number of children who have become victims of sexual violence or abuse, including child prostitution, please indicate the measures taken to combat this phenomenon. Please provide information on: (a) the number of such cases recorded; (b) investigations carried out; (c) sanctions imposed; and (d) remedies provided to victims. Please clarify whether children engaged in prostitution are always treated as victims and never as offenders. Please comment on reports according to which there is a lack of expertise in responding to child rape, as well as to reports according to which San girls have suffered sexual abuse by teachers, and indicate whether allegations of sexual abuse of indigenous girls in schools are always investigated.

#### **Right to vote (art. 25)**

25. In view of the information provided in paragraph 221 of the State party's report, please clarify whether any alternatives are in place for persons who want to register to vote but who cannot be identified by someone who is already registered within the meaning of the law.

#### **Rights of minorities (art. 27)**

26. Please provide information on any specific measures to ensure indigenous participation in decision-making processes relating to traditional sites and objects, and whether consultations with affected communities are systematically carried out before awarding concessions to extractive industries. Please also inform the Committee on any mechanisms in place to provide redress and compensation for the loss of land by indigenous peoples, and on the measures taken to identify adequate lands for their resettlement, in particular regarding the Himba, Ovatjimba, Ovatie, Ovazemba and San. In view of paragraph 228 of the State party's report, please elaborate on the measures taken to maintain and strengthen cultural diversity. Furthermore, please inform the Committee

whether any steps have been taken to investigate allegations of discrimination and/or abuse by the traditional authorities of dominant tribes in areas also inhabited by other, smaller tribes, and whether indigenous language interpreters work in courts, tribunals and prosecutors' offices.

**Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)**

27. Please indicate what measures have been taken to disseminate the second periodic report of the State party and information on its forthcoming examination by the Committee. Please provide detailed information on the involvement of representatives of civil society, non-governmental organizations, minority and indigenous groups, and the national human rights institution in the preparatory process of the State party's report.

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