

International Covenant on Civil and Political Rights

22 April 2016

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Human Rights Committee**Concluding observations on the second report of Namibia***

1. The Committee considered the second periodic report of Namibia (CCPR/C/NAM/2) at its 3236th and 3237th meetings (CCPR/C/SR.3236 and 3237), held on 8 and 9 March 2016. At its 3259th meeting, held on 23 March 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second report of Namibia, albeit six years late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken during the reporting period to implement the provisions of the Covenant. It is concerned, however, that despite several reminders the State party has not submitted the follow-up information that was requested in the Committee's concluding observations of 2004 (CCPR/CO/81/NAM) and that was due by 29 July 2005. The Committee expresses its appreciation to the State party for its written replies (CCPR/C/NAM/Q/2/Add.1) to the list of issues (CCPR/C/NAM/Q/2), supplemented by the oral responses provided by the delegation and for the supplementary information provided in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

- (a) The Children's Status Act (Act No. 6 of 2006);
- (b) The Prevention of Organized Crime Act (Act No. 29 of 2004);
- (c) The National Disability Council Act (Act No. 26 of 2004);
- (d) The National Human Rights Action Plan (2014);
- (e) The Sector Policy on Inclusive Education (2013);
- (f) The National Agenda for Children (2012-2016);
- (g) The National Gender Policy (2010-2020);
- (h) The National Gender Plan of Action (2010-2020);
- (i) The National HIV/AIDS Policy (2008);
- (j) The National Policy on Special Needs and Inclusive Education (2008);
- (k) The Education Sector Policy for Orphans and Vulnerable Children (2008).

4. The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2007.

C. Principal matters of concern and recommendations**Views under the Optional Protocol**

5. The Committee remains concerned at the absence of a mechanism to implement the Committee's Views under the Optional Protocol (art. 2).

6. The State party should consider establishing a specific mechanism to give full effect to the Committee's Views in order to guarantee effective remedies to the victim of a violation under the Covenant.

National human rights institution

7. The Committee is concerned that the Office of the Ombudsman is insufficiently resourced (art. 2).

8. The State party should increase resources allocated to the Office of the Ombudsman to ensure that it can adequately fulfil its mandate . It is furthermore encouraged to adopt the proposed amendments to the Ombudsman Act (Act No. 7 of 1990) . The Office should also be granted the power to recruit its own staff to be fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) .

Non-discrimination

9. While noting the measures taken to eliminate discrimination, the Committee is concerned that protection against discrimination is insufficient. It is particularly concerned about:

(a) The prevalence of de facto racial discrimination and discrimination against indigenous peoples, as well as the significant number of laws remaining from the apartheid era that discriminate on the basis of race, such as the rules on intestate succession according to the Native Administration Proclamation 15 of 1928;

(b) Discrimination, harassment and violence against lesbian, gay, bisexual and transgender persons, including cases of so-called “corrective rape” against lesbians;

(c) Discrimination on the basis of sexual orientation not being explicitly prohibited, exclusion of sexual orientation as a prohibited ground for discrimination from the Labour Act (Act No. 11 of 2007), the maintenance of the common law crime of sodomy, the exclusion of same-sex partnerships from the Combating of Domestic Violence Act (Act No. 4 of 2003);

(d) The continuing discrimination against persons with disabilities, as well as against persons who are HIV-positive, including in employment (arts. 2, 3, 7 and 26).

10. The State party should conduct extensive education and awareness-raising campaigns involving and targeting traditional leaders and the general public , both children and adults , to eliminate all forms of discrimination. It should:

(a) Repeal all laws that discriminate on the basis of race and finally and adopt legislation on intestate succession so as to apply the same rules to all persons without discrimination ;

(b) Adopt legislation explicitly prohibiting discrimination based on sexual orientation, including in the Labour Act (Act No. 11 of 2007) , and adopt hate crime legislation punishing homophobic and transphobic violence and vigorously enforce it;

(c) Abolish the common law crime of sodomy and include same-sex relationships in the Combating of Domestic Violence Act (Act No. 4 of 2003) so as to protect same-sex partners;

(d) Intensify efforts to combat discrimination against persons with disabilities and against persons who are HIV-positive, and ensure their full integration into all spheres of public life.

Discrimination against women

11. The Committee is concerned about the persistence of discriminatory stereotypes and deep-rooted patriarchal attitudes regarding the roles and responsibilities of women, which furthermore constitute a major cause of violence against women. It also notes with concern that:

(a) Women are frequently discriminated by customary laws that, inter alia, allow family members to confiscate the property of deceased men from their widows and children;

(b) Reparation has not been granted to all women who have been subjected to forced or coerced sterilization owing to their HIV-positive status;

(c) Single mothers are regularly subjected to discrimination and stigmatization;

(d) The rate of female unemployment is high, occupational segregation persists between men and women, and the number of women in positions of responsibility is relatively low (arts. 2, 3, 7 and 26).

12. The State party should take comprehensive measures to eliminate stereotypical conceptions of gender roles, involving and targeting traditional leaders and the public at large. It should also :

(a) Cooperate with traditional leaders to abolish discriminatory customary laws;

(b) Ensure that women subjected to forced or coerced sterilization have access to reparation as well as to sterilization reversal where possible , and adopt formal guidelines to ensure that the fully informed consent of a woman undergoing sterilization is systematically sought by medical personnel;

(c) Take comprehensive awareness - raising measures to eliminate all forms of stigmatization and discrimination against single mothers ;

(e) Take concrete measures with a view to eliminating female unemployment as well as occupational segregation, both horizontal and vertical , through, inter alia, education, training and retraining , and consider introducing temporary special measures where appropriate to increase the number of women in positions of responsibility .

Harmful practices against women and girls

13. The Committee is concerned about the reported prevalence of harmful practices against women and girls, including various sexual initiation practices, such as forcing girls to have sex with their grandfather, uncle or brother (arts. 3, 7, 24 and 26).

14. The State party should conduct extensive public education measures, informing communities that such harmful practices are, inter alia, linked to discrimination against women and girls, gender-based violence and sexual exploitation and that they may propagate sexually transmitted diseases. It should ensure that existing laws criminalizing rape and violence are enforced with regard to these practices.

Termination of pregnancy and access to contraception

15. The Committee is concerned about the cumbersome procedures required to access legal abortion, including the certification by three doctors, which lead women to seek unsafe, clandestine abortion that puts their lives and health at risk or to resort to so-called “baby dumping”, and the need for a certificate from a magistrate in case of pregnancy resulting from rape. Furthermore, while noting the information provided by the delegation that contraceptives are available free of charge to adolescents in health facilities as well as in youth centres, the Committee is concerned that this information is insufficiently known among the population (arts. 3, 6 and 24).

16. The State party should remove unwarranted requirements to access legal abortion that lead women to resort to unsafe, clandestine abortion . It should also:

- (a) Adopt and implement awareness-raising policies to combat stigmatization of women and girls who seek abortions ;**
- (b) Guarantee the availability of good quality services for the management of complications arising from unsafe abortions and guarantee immediate and unconditional treatment ;**
- (c) Guarantee and ensure access to information about the accessibility of contraception and sexual health , particularly in rural and remote areas;**
- (d) Establish alternative care systems for babies deprived of family care .**

Customary marriage, widow inheritance and forced marriage

17. The Committee remains concerned about the high number of customary marriages that are not registered, depriving women and children of their rights, particularly concerning inheritance and landownership, and encouraging the practice of polygamy and bride price (*lobola*), the latter remaining legal under the bill on the recognition of customary marriages. The Committee is also concerned about reported cases of forced marriage of children under customary laws, as well as about the ongoing practice of forcing a widow to marry the brother of her deceased husband, so-called “widow inheritance” (arts. 2, 3, 7, 8, 23, 24 and 26).

18. The State party should include the prohibition of *lobola* in the bill on the recognition of customary marriages and speedily adopt it to ensure the registration of customary marriages. It should also ensure that early and forced marriage is criminalized . It should further , in cooperation with traditional leaders, abolish the practice of so-called “widow inheritance”.

Enforced disappearances

19. The Committee is concerned about several reports of cases of enforced disappearance having taken place in the context of the liberation struggle and during the 1999 secession attempt in the former Caprivi region, now Zambezi. It notes with concern that the State party has taken insufficient measures to investigate such reports and identify perpetrators (arts. 6, 7 and 9).

20 . The State party should investigate these reports and , if verified, determine accountability, prosecute and punish the perpetrators if found guilty, as well as make all possible efforts to determine the fate of the persons who have disappeared.

Prohibition of torture and ill-treatment

21. The Committee is concerned at reports of torture and ill-treatment in police cells and detention facilities, of the use of excessive force against suspects and at:

- (a) Reported cases of violence and harassment against lesbian, gay, bisexual and transgender persons by members of the police;**

- (b) Reports that members of the police force regularly detain and rape sex workers;
- (c) The lack of investigation of cases of torture to which persons arrested after the 1999 secession attempt in the former Caprivi region have been subjected;
- (d) The lack of any independent mechanism to investigate acts of torture and ill-treatment (arts. 2, 7, 10 and 26).

22. The Committee encourages the State party to adopt legislation on prevention and combating of torture, and provide training to all relevant professionals, including police and prison guards on its provisions. It should furthermore:

- (a) Ensure that perpetrators of torture and ill-treatment are identified, prosecuted and tried before ordinary courts, and, if found guilty, punished and victims adequately compensated;**
- (b) Ensure that all cases of torture and ill-treatment are properly investigated by an independent mechanism;**
- (c) Ensure that sex workers can report crimes without risking being prosecuted for their occupation and that they can participate in opt-out schemes.**

Torture, violence, including sexual violence against women, and the right to life

23. While noting the measures taken by the State party, the Committee is concerned that the number of cases of violence against women remains very high. It also notes with concern that:

- (a) A relatively high number of women are murdered by their partners, so-called “passion killings”;
- (b) The prosecution rate of perpetrators of domestic violence is low and the Combating of Domestic Violence Act (Act No. 4 of 2003) is insufficiently enforceable, since protection orders may be issued by magistrates only, whose number is insufficient and who are accessible only during court hours;
- (c) Rape victims frequently withdraw their complaints, inter alia, due to receiving compensation from the perpetrator, succumbing to family pressure, shame or threats;
- (d) Women in the workplace underreport sexual harassment due to fear of dismissal;
- (e) Gender-based violence protection units have insufficient capacity to shelter victims of violence, and are understaffed (arts. 3, 6, 7 and 26).

24. The State party should:

- (a) Adopt and implement awareness-raising policies and public education programmes involving and targeted at traditional leaders and the public at large, to make such violence socially unacceptable, as well as train traditional leaders on the elimination of gender-based violence;**
- (b) Systematically undertake prompt, impartial and effective investigations to identify the perpetrators of so-called “passion killings”, to prosecute them and, if they are found guilty, to punish them;**
- (c) Dismantle all legal and practical barriers to prosecuting and punishing perpetrators of domestic violence and to implementing the Combating of Domestic Violence Act (Act No. 4 of 2003) including by increasing the availability of magistrates and other authorities to issue protection orders and ensure access to justice on a 24 - hour daily basis;**
- (d) Fully operationalize and expand shelter facilities for domestic violence victims across the State and ensure that all victims of violence have effective recourse to shelter while the protection order is processed, as well as access to psychosocial counselling and compensation;**
- (e) Protect victims of violence, including of rape and sexual harassment, from stigmatization as well as from reprisals, and adopt legislation on witness protection;**
- (f) Ensure that police, prosecutors and judges are adequately trained in addressing issues of gender-based violence, that victims of rape and other such violence receive appropriate support, counselling and compensation, and are protected from stigmatization and reprisals. The State party should also adopt pending legislation that would allow sexual violence prosecutions to proceed if the victim withdraws the complaint, to ensure that perpetrators are prosecuted and punished.**

Trafficking in persons and forced labour

25. The Committee is concerned that women and children are trafficked within the State party for the purpose of forced labour and sexual exploitation, including forced prostitution, and notes with concern that specific anti-trafficking legislation is lacking and that the number of prosecutions is low. It furthermore notes with concern that the State party has made insufficient efforts to tackle forced labour, including child labour, and that the Labour Inspectorate is underresourced (arts. 3, 7, 8 and 24).

26. The State party should speedily adopt anti-trafficking legislation, and ensure that adequate frameworks are in place to identify victims, investigate all human rights violations relating to trafficking, prosecute the perpetrators and establish comprehensive gender and age-sensitive measures to rehabilitate victims. Furthermore, the State party should significantly increase the number of labour inspectors and the resources available to them, particularly vehicles, as well as ensure they have full access to private farms.

Police custody and pretrial detention

27. The Committee is concerned that a person may be held in custody beyond 48 hours if it is “not reasonably possible” to bring him or her before a magistrate within this time frame, and notes with concern that the 48-hour rule is repeatedly infringed. It also notes with concern that pretrial detention is frequently excessively long which is, inter alia, due to the heavy backlog in the adjudication of cases, and that many persons charged following the 1999 Caprivi secession attempt have been in pretrial detention for up to 15 years (arts. 9 and 14).

28. In the light of the Committee’s general comment No. 35 (2014) on liberty and security of person, the State party should ensure adherence to the 48-hour rule and make transport available to take the detainee to a magistrate. It should furthermore put a stop to abusive and excessive periods of detention and develop a national policy for reducing the backlog of cases, as well as provide effective remedies and compensation for those unlawfully held in custody.

Right to a fair trial

29. The Committee notes with concern that recourse to appeal is frequently hampered by the excessive delay in the preparation of court records. It also notes with concern that many arrests in the context of the 1999 Caprivi secession attempt were reportedly based on ethnicity or political opinion, and that suspects were tried according to the “common purpose doctrine”, charging all detainees equally on all counts (arts. 2, 14 and 26).

30. The State party should make all possible efforts to significantly accelerate the preparation of court records and ensure a swift appeal process for the review of convictions and sentences. It should also limit the common purpose doctrine and ensure respect for the presumption of innocence under all circumstances.

Free legal aid

31. The Committee is concerned that access to free legal aid is limited to persons with a monthly income below the particularly low amount of N\$ 2,000 and is currently further impeded due to budgetary constraints (arts. 9 and 14).

32. The State party should increase funding granted to its legal aid scheme, lower the barriers to accessing it, and ensure that it is, at minimum, available where the interests of justice so require.

Detention conditions

33. The Committee is concerned about the particularly poor living conditions in detention facilities, including severe overcrowding (art. 10).

34. The State party should continue its efforts to improve conditions in its detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It should place particular focus on addressing overcrowding, including by resorting to alternative non-custodial sentences, such as parole and community service. The Committee furthermore encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Expulsion and detention of asylum seekers

35. The Committee notes with concern that asylum seekers and refugees are required to reside in the Osire refugee settlement, which they may leave only after obtaining a permit, thereby infringing on their ability to, inter alia, pursue education and employment. It also notes with concern that persons requesting asylum on the basis of persecution for sexual orientation or gender identity may not be sufficiently protected against refoulement. Furthermore, the Committee is concerned that unaccompanied or separated children are treated like adult asylum seekers (arts. 2, 9 and 24).

36. The State party should remove restrictions on the ability of refugees and asylum seekers to move freely within the State party. It should also include persecution based on sexual orientation and gender identity among the grounds for protection against refoulement. Furthermore, the State party should ensure that unaccompanied or separated children are afforded special protection and systematically provided with a regularly monitored guardian upon their arrival.

Monitoring, surveillance and interception of private communication

37. The Committee notes with concern that interception centres seem operational despite the fact that their legal basis, part 6 of the Communications Act (Act No. 8 of 2009), is not yet in force. While noting the indication by the delegation that all

interceptions must be authorized by a magistrate, and that no private information is kept, the Committee is concerned about the lack of clarity regarding the reach of legal interception possibilities, as well as about the safeguards to ensure respect of the right to privacy in line with the Covenant (arts.17 and 21).

38. The State party should ensure that the interception of telecommunications may only be justified under limited circumstances authorized by law with the necessary procedural and judicial safeguards against abuse, and supervised by the courts when in full conformity with the Covenant.

Freedom of expression

39. The Committee is concerned about allegations of self-censorship by journalists working for State-owned media, as well as reported cases of harassment of journalists by members of the South West Africa People's Organization. It also notes with concern that political activities are restricted on university campuses. The Committee is further concerned about the lack of any legislation on the right of access to information (art. 19).

40. The State party should protect journalists against any form of harassment and threats, investigate incidents of attacks on journalists, and bring those responsible to justice. It should encourage debate and dialogue on political issues on university campuses. Furthermore, the State party should develop and adopt new legislation on the right to access information.

41. The Committee notes with concern that according to the Research, Science and Technology Act (Act No. 23 of 2004), research projects, defined by the Act in particularly broad terms, are subject to prior authorization, the application procedure for which is furthermore cumbersome and costly (art. 19).

42. The State party should carry out all necessary legal amendments to ensure that research may be carried out without State authorization and fully respect, protect and promote academic freedoms.

Rights of minorities

43. The Committee notes with concern that all traditional indigenous lands remain under State ownership while traditional authorities may only administer communal lands according to the Communal Land Reform Act, and that indigenous groups are insufficiently consulted regarding the extraction of natural resources on their traditional lands (arts. 2 and 26).

44. The State party should ensure that indigenous peoples have titles over lands and territories that they traditionally occupied or resources they owned. It should seek the free and informed consent of indigenous communities and give primary consideration to their opinions and decisions prior to granting licences to extractive industries.

D. Dissemination of information relating to the Covenant

45. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, its second periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the other official language of the State party.

46. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 10 (non-discrimination), 22 (prohibition of torture and ill-treatment) and 24 (torture, violence, including sexual violence against women, and the right to life) above.

47. The Committee requests the State party to submit its next periodic report by 31 March 2020 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country, as well as minority and marginalized groups. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.