



**International Covenant on  
Civil and Political Rights**

Distr.: General  
23 May 2022

Original: English  
English, French and Spanish only

---

**Human Rights Committee**

**Third periodic report submitted by Namibia  
under article 40 of the Covenant, due in 2020\***

[Date received: 4 August 2021]

---

\* The present document is being issued without formal editing.



## Contents

	<i>Page</i>
Foreword .....	3
Abbreviations .....	4
I. Introduction .....	6
II. Responses to the concluding observations of the Committee on civil and political rights .....	6
III. Articles of the Covenant (1–27) .....	26
Article 1 – The right to self-determination of peoples .....	26
Article 2 – Implementation of the Covenant at national level .....	27
Article 3 – Equality of rights between men and women .....	28
Articles 4 and 5 – Derogation of rights (state of emergency) .....	28
Article 6 – The right to life .....	28
Article 7 – Prohibition of torture and cruel treatment or punishment .....	29
Article 8 – Slavery and forced labour .....	29
Article 9 – The right to liberty and security of persons .....	31
Article 10 – Humane treatment of persons deprived of their liberty .....	31
Article 11 – The right to protection from imprisonment due to failure to fulfil contractual obligation .....	32
Article 12 – The right to freedom of movement .....	33
Article 13 – Deportation of aliens .....	33
Article 14 – The right to equality before the courts and to a fair and public hearing by an independent court established by law .....	33
Article 15 – Non-retroactive laws .....	33
Article 16 – The right to recognition before the law .....	33
Article 17 – The right to respect of privacy, family, home and correspondences, and protection of honour and reputation .....	34
Article 18 – The right to freedom of thought, conscience and religion .....	34
Article 19 – The right to freedom of expression .....	35
Article 20 – Prohibition of propaganda for war, national, racial or religious hatred .....	36
Articles 21 and 22 – The right to peaceful assembly and association .....	36
Article 23 – Protection of the family, the right to marriage and equality of the spouses .....	37
Article 24 – The rights of the child .....	37
Article 25 – The right to participate in public affairs, voting rights and the right of equal access to public service .....	38
Article 26 – Equality and equal protection before the law .....	38
Article 27 – The rights of minorities .....	39

## Foreword

The Government of Namibia is pleased to submit to the Human Rights Committee, Namibia's third periodic state report covering the period from 2015 to 2019. This report has been prepared in line with the general guidelines of the Human Rights Committee regarding the form and content of periodic reports to be submitted by States parties (CCPR/C/66/GUI/Rev.2). This periodic report is the result of collaborative efforts between government ministries, offices, agencies well as research information and reports from relevant Non-Governmental Organisations (NGOs), under the astute guidance of the Ministry of Justice.

When Namibia joined the United Nations on 23 April 1990, it accepted the Charter of the United Nations which articulates the commitment of Member States to, *inter alia*, uphold, respect and observe the human rights of citizens and the fundamental freedoms of all. To date, Namibia is a State party to seven (7) out of nine (9) core international human rights instruments, including the International Covenant on Civil and Political Rights (hereinafter "the ICCPR").

Chapter 3 of the Namibian Constitution continues to complement and support the vision of the ICCPR to recognize the inherent dignity and the equality of all persons without distinction as to race, sex, language, or religion. Article 10, in particular provides that all persons shall be equal before the law and that no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Correspondingly, the Government has also continued to implement Namibia's commitments under ICCPR, since the presentation of the country's second periodic report to the Human Rights Committee in 2014. As part of its efforts to ensure adherence to these commitments, Namibia has enacted the Child Care and Protection Act, 2015 (Act No. 3 of 2015) which, together with the Maintenance Act, 2003 (No. 9 of 2003), ensures the protection of children in terms of article 23(4) of the ICCPR. The Child Care and Protection Act, 2015 came into force on 30 January 2019 and reaffirms the equal rights and responsibilities of both parents to care for their children. The Namibian Government has also passed the Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018), that came into force on 1 March 2018. The Repeal of Obsolete Laws Act, 2018 abolishes a number of pre-independent and unjust by-laws, laws, regulations, proclamations and ordinances that discriminate on the basis of race, sex, colour, ethnic origin, religion, creed, social and economic status and are therefore inconsistent with the Namibian Constitution.

Suffice to say, the Government remains committed to protecting and promoting human rights in the country in order to fulfil Namibia's obligations under the various human rights instruments to which it is a State party. In the result, Namibia will continue to work diligently with regional and international bodies to ensure that the safeguarding of human rights continues to take precedence in world affairs.

Hon. Yvonne **Dausab**, MP  
Minister of Justice  
Republic of Namibia

## Abbreviations

AGBH	Assault with intent to do Grievous Bodily Harm
AR	Affirmative Repositioning Movement
ARV	Antiretroviral
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CSE	Comprehensive Sexuality Education
ECN	Electoral Commission of Namibia
EFN	Editors Forum of Namibia
GBVPU	Gender Based Violence Protection Units
ICCPR	International Covenant on Civil and Political Rights
IEC-	Information, Education and Communication
IID	Internal Investigation Directorate
ILO	International Labour Organisation
IMC	Inter-Ministerial Committee on Human Rights and International Humanitarian Law
IOM	International Organisation for Migration
IUM	International University of Management
JCM	Judicial Case Management
KPTWG	Key Populations, Technical Working Group
LAC	Legal Assistance Centre Namibia
LRDC	Law Reform and Development Commission Namibia
MEAC	Ministry of Education, Arts and Culture
MET	Ministry of Environment and Tourism
MGECW	Ministry of Gender Equality and Child Welfare
MHSS	Ministry of Health and Social Services
MICT	Ministry of Information and Communication Technology
MLs	Mining Licences
NAMPHIA	Namibia Population based HIV Impact Assessment
NBC	Namibian Broadcasting Corporation
NCB	National Coordinating Body
NCS	Namibian Correctional Service
NDPs	National Development Plans
NGO	Non- Governmental Organisations
NGSIP	Namibian German Special Initiative Program
NIED	National Institute for Educational Development
NEKA	Namibia Exile Kids Association
NSF	National Strategic Framework
NUST	Namibia University of Science and Technology
OMAs	Offices, Ministries and Agencies

OPD	Organisation of People with Disabilities
OPM	Office of the Prime Minister
PMTCT	Prevention of Mother to Child Transmission
POCA	Prevention of Organised Crime Act
PTTMPO	Prevention of Torture Training Manual for Police Officers
SOPs	Standard Operating Procedures
SRM	Sexual and Reproductive Health Services
STEM	Science, Technology, Engineering and Mathematics
TIKA	Turkish Government through its international agency
TIP	Trafficking in Persons
TVET	Technical and Vocational Education and Training
UNAIDS	United Nations Programme on HIV and AIDS
UNAM	University of Namibia
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
VAW	Violence Against Women
VMC	Voluntary Medical Male Circumcision

## **I. Introduction**

1. Namibia is a state party to the International Covenant on Civil, and Political Rights (ICCPR), after ratifying the Covenant on 28 November 1982. This report is submitted pursuant to Article 40 of the International Covenant on Civil and Political Rights (ICCPR) which requires states parties to submit reports on the implementation of the provisions of the ICCPR by responding to recommendations of the Human Rights Committee and by indicating the measures adopted to give effect to the rights recognized under the ICCPR and on the progress made on the enjoyment of those rights.

2. In line with the guidelines of the Human Rights Committee on the form and content of reports, this report consists of three parts: Part I is an introductory section which includes information on the reporting methodology; Part II provides information, and responses to the concluding observations of the Committee on Civil and Political Rights on the last report, Part III provides information on the substantive rights recognised under the relevant articles of the Covenant since the last report.

3. The information contained in this report covers the period 2015 to 2019. Namibia welcomes the position of the Committee to accept the Third periodic report to be combined and submitted as one document.

### **Report methodology**

4. This report was compiled by the Ministry of Justice based on information received from Government Offices, Ministries and Agencies (OMAs) as well as research information and reports from relevant non-governmental organisations (NGOs).

## **II. Responses to the concluding observations of the Committee on civil and political rights**

### **Principal matters of concern and recommendations (response to recommendation No. 5 and 6)**

5. The state party informs the Committee that these mechanisms are already in place. A complainant who claims that his/her rights has been violated has access to remedies in the Namibian courts. In addition, any complainant may approach the committee as per the Optional Protocol, provided that such complainant has exhausted the domestic remedies first.

### **National human rights institutions (response to recommendation No. 7 and 8)**

6. A new Ombudsman Amendment Bill has been drafted; and it awaits the Minister of Justice's approval on policy issues before it can move forward. The Bill will provide for the appointment of both the Ombudsman and the Deputy Ombudsmen by Proclamation in the Gazette. Moreover, it recommends the establishment in the Public Service of Namibia an office that will be called the Office of the Ombudsman, that will be responsible for providing administrative and financial support services and related matters of the Office and assist the Ombudsman in performing his or her powers, functions and duties as provided for in the Namibian Constitution, in the Bill or any other law. This Office will consist of the Ombudsman, Deputy Ombudsmen, including Children's Advocate and the staff members, some of whom will be designated as complaints investigators. In October 2018 the Office of the Ombudsman was re-accredited with an A- status in terms of the Paris Principles.

## **Non-discrimination (response to recommendation No. 9 and 10)**

### **Intestate Succession**

7. The Ministry of Justice through the Directorate Master of the High Court is currently consulting on the possible enactment of an Intestate Succession Bill that will aim at addressing some of the challenges arising from the existing intestate succession regime.

### **Hate Crime Legislation**

8. As per the last report, the Racial Discrimination Prohibition Act, 1991 (Act No. 26 of 1991) read with Articles 10 and 23 of the Namibian Constitution remains the state's primary anti-discrimination law that combats all forms of racism. In addition to the above, it is noteworthy to mention that the Law Reform Development Commission (LRDC), through the Ministry of Justice, reviewed 144 discriminatory laws that were previously designed to advance the policy and agenda of the former apartheid regime. This review and reform exercise have culminated into the promulgation of the Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018) which came into force on the 1<sup>st</sup> March 2018. The office of the Ombudsman is currently busy with a draft hate speech bill. The draft bill is still incomplete as stakeholder consultations with the legal fraternity and government agencies still needs to be conducted.

### **Common law crime of sodomy and same-sex relationship**

9. The Namibian non-discriminatory laws apply to all persons regardless of their sexual orientation, the LRDC is in the process of reviewing the law which criminalises Sodomy which has not attracted prosecution ever since independence. Namibia upholds the protection of all citizens irrespective of their sexual orientation. The Ombudsman office had the national human rights action plan that was approved at cabinet inclusive of LGBTI issues. The LGBTI are also protected by Chapter 3, Article 10 of the Namibian Constitution.

### **Persons who are HIV positive**

10. The Namibian Constitution guarantees equal rights and freedoms to all persons and prohibits all forms of discrimination. The Government has placed the fight against HIV/AIDS high on the national agenda and provides all person's equal access to public health facilities. Moreover, the Government through the Ministry of Health and Social Services has established an extensive HIV/AIDS awareness program which aims to inform and consult infected mothers and couples. The Government has made significant progress on the Prevention of Mother-To-Child Transmission (PMTCT) services which have been expanded, and to date these services are available in about 96% of the health facilities throughout the country.

11. In addition, the Ministry of Health and Social Services introduced the National Strategic Framework (NSF) for HIV and AIDS response in Namibia for the period 2017/18-2021/2022. This was the Third National Strategic Framework for HIV and AIDS in Namibia. The NSF uses investment approach thinking to identify the key populations, services and sites that will produce the highest coverage and impact results from intensified programming. The NSF has prioritised female sex workers not only with information on HIV/AIDS but with high impact HIV testing modalities, prevention, treatment and care. Moreover, health care workers have been trained in providing non-judgemental health care services to sex workers and other key populations.

12. The Namibia Population-Based HIV Impact Assessment (NAMPHIA) in 2017 indicated that Namibia's HIV interventions have resulted in excellent progress towards the UNAIDS targets. Women in Namibia achieved the UNAIDS 90-90-90 goals and is striving towards the 95-95-95 goals. Namibia, with the support of its development partners, has made significant progress in addressing HIV and AIDS. However, some social-cultural, policy and legal barriers still prevent access and utilisation of services by some key population groups. The Ministry of Health and Social Services established the platform known as Key Populations Technical Working Group (KP TWG) as part of the coordination mechanism for HIV/AIDS as stipulated in the NSF. The platform allows for sharing national and

programmatic information on KP programs. The Ministry works closely with the Society for Family Health (SFH). One of the programs SFH is implementing is to compliment (MoHSS) interventions, the HIV prevention care and treatment for key populations, which is the female sex workers, MSM and transgender people.

13. In an effort to address skills shortages in the fight against HIV/AIDS, the Government has implored institutions of higher learning to introduce specific courses aimed at increasing the number of trained health care professionals. To this effect, the University of Namibia and the International University of Management offer courses on HIV/AIDS Education and Management as well as Health and Wellness studies. The HIV/AIDS Sectoral Policy for Defence Force does not allow for discrimination on the basis of HIV status.

### Persons with Disabilities

14. The State party signed the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on the 25th April 2007, and ratified the Convention (including the Optional Protocol) on the 4th December 2007). Namibia endorsed the African Decade Plan of Action for Person with Disabilities in 2005. The Namibian legal and policy framework on equality and non-discrimination fully complies with Article 5 of the CRPD. Persons with disabilities are able to use the law to protect and pursue interests on an equal basis with others.

15. The following table shows disaggregated statistics on person with disabilities that are employed in various sectors for the period of 2015-2018 as recorded with the Office of the Equity Commissioner. There are no statistics available for 2018-2020.

Table 1  
**Shows statistics of persons with disabilities employed in various sectors for the period of 2015–2018**

Sector	2014/2015		2015/2016		2016/2017		2017/2018	
	M	W	M	W	M	W	M	W
Agricultural Sector	1	1	4	2	6	3	5	2
Construction sector	34	8	29	7	35	10	47	7
Education, Training and Development Sector	14	13	9	11	17	10	12	10
Financial Intermediation	24	12	17	11	35	14	22	10
Health and Welfare Sector	1	7	1	6	1	8	3	7
Information systems, Electronics and telecommunication Technologies Sector	4	3	42	9	29	3	32	3
Local Government, Water and Related Services Sector	48	3	42	9	29	3	40	14
Manufacturing Sector	39	13	44	13	45	17	59	12
Mining Sector	66	18	54	12	56	13	59	12
Private Security, Legal and Correctional Services	32	17	52	36	69	34	47	31
Public Service Sector	123	69	90	73	216	131	240	170
Services Sector	88	42	110	43	109	61	84	55
Tourism and Hospitality	26	7	16	7	23	4	19	10
Transport	20	4	16	10	13	3	25	7
Wholesale and Retail	67	50	66	56	58	52	90	62
<b>Total</b>	<b>625</b>	<b>275</b>	<b>570</b>	<b>308</b>	<b>753</b>	<b>383</b>	<b>757</b>	<b>420</b>

Source: Ministry of Labour, Industrial Relations and Employment Creation, 2020.

16. The University of Namibia has policies regarding support to staff and students with disabilities. The University has also modified its infrastructure to enable access for persons with disabilities. The table below shows enrolment for students with disabilities over the last five years.

Table 2  
**Enrolment of students with disabilities at the University of Namibia over the last five years.**

<i>Academic Year</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
Windhoek Main Campus	17	22	27	38	47	55
Khomasdal Campus	3	4	6	4	7	10
Hage Geingob Campus				3	4	5
Neudam Campus		1		1	1	1
Sam Nujoma Campus	1	1	2	1		1
Jose Eduardo-dos-Santos Campus				2	3	3
Hifikepunye Pohamba	1	1	2	6	5	5
Katima Mulilo Campus				4	32	32
Rundu Campus				1	1	8
Southern Campus	1	1	1	1	1	1
Oshakati Campus	3	4	2	5	4	8
<b>Total</b>	<b>26</b>	<b>34</b>	<b>40</b>	<b>66</b>	<b>105</b>	<b>129</b>

*Source:* University of Namibia, 2020.

17. The Namibian University of Science and Technology enrolls 142 students with disabilities, namely: 64 males and 78 females. The Namibian law prohibits discrimination against persons in employment, health care, education, and the provision of other state services. The Labour Act, 2007 (Act No. 11 of 2007) prohibits discrimination in any employment decision based on a number of factors, including any “degree of physical or mental disability.” However, the Labour Act, 2007 makes exception in the case of a person with a disability if that person, as a consequence of disability, is unable to perform the duties or functions associated with the employment or occupation in question. Enforcement in this area is challenging, as societal discrimination persists.

18. The Office of the Ombudsman is an independent body responsible for redressing violations of the human rights of all Namibians, including those with disabilities in terms its functions and powers provided under Chapter 10 of the Namibian Constitution and the Ombudsman Act, 1990 (Act No. 7 of 1990). Persons with disabilities can file complaints of human rights violations with the Office of the Ombudsman. The Office of the Ombudsman can approach a competent court on behalf of complainants for remedy for any violations of their fundamental rights and freedoms. The Ombudsman is also empowered to carry out public hearing (enquiries) on human rights discrimination, recently the Ombudsman conducted public hearings on discrimination, stigmatisation and challenges faced by persons with albinism from the 28 July -5 August 2019 across four (4) regions.

19. There are a number of challenges to the application of Article 5 of the CRPD. These include poverty; limited resources for litigation; lack of information in the use of rightful entities with regards to reporting any rights violation; communication barriers; limited capacity of judiciary and court staff to deal with disability issues; inaccessible buildings and transport; Court papers not available in braille or in a font size accommodative to persons with partial sight/visual impairment; and limited provision of sign language services.

20. Section 9 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015), states that every person, authority, institution or body must treat a child with disabilities in a manner which respects the child’s dignity. Furthermore, it places an obligation on various institutions such as education, training, health care services, support services, rehabilitation services to have appropriate care and protection in order to have access to the aforementioned services which is in the best interest of the child.

21. Office of the Ombudsman conducted a hearing on the condition of people with albinism in the country. Public hearings were held in Oshakati on the 29 July 2019, Eenhana on the 30 July 2019, Okongo on the 21 July 2019, Rundu on the 01 August 2019, and in

Windhoek on the 05 august 2019. The hearings were attended by Persons with albinism, President and Vice-President of the Namibian Albino Association, Ombudsman, and a staff member from the office of the Ombudsman. The next step was to conduct training workshop for Persons with Albinism in collaboration with the human rights media centre in March 2020. However, due to Covid-19 restrictions the training could not take place as scheduled. The Office of the Ombudsman intends to reschedule the training for March 2021 and the report will follow thereafter.

### **Discrimination against women (response to recommendation 11 and 12)**

22. The Government through the Ministry of Gender Equality, and Child Welfare (MGECW) continues to take measures to eliminate stereotypical gender roles in communities. This is done by involving and targeting traditional leaders and the public at large by conducting awareness campaigns on the negative impact of the said discriminatory stereotypes.

23. All forms of sterilization are regulated under the Abortion and Sterilization Act, 1975 (Act No. 2 of 1975). Forced sterilization of HIV positive women is prohibited by the Constitution of Namibia which is the supreme law of the country. The Supreme Court has ruled against the Government in the case of LM and Others v Government of the Republic of Namibia Case No: SA 49/2012 citing lack of informed consent due to mental capacity during labour. The Ministry of Health and Social Services recently introduced new directives on sterilization. This directive emphasises the importance of prior and informed consent from women who intend to undergo the procedure. The Ministry issued a Government Notice No. 73, Regulation 7 (1) (c) to (XIII) on its position with regard to informed consent.

24. The Government acknowledges that there are still some forms of stigmatization towards single mothers in isolated cases in some parts of the country. However, with limited resources, the government through the Ministry of Gender Equality, Poverty Eradication and Social Welfare continues to provide child grants to single mothers without an income. Single mothers who meet requirements for government assisted food aid programme known as the Food Bank can apply for such assistance. The government through the Ministry of Justice recently appointed a number of Maintenance Officers and Investigating Officers to ensure that maintenance claims for single parents are processed timeously and defaulters are held accountable.

25. The Government acknowledges the Committee's concern on the high rate of female unemployment and occupational segregation which persists between men and women, and that the rate of women in positions of responsibility is low. The government does not have a social protection policy in existence. However, the Ministry of Gender Equality, Poverty Eradication and Social Welfare facilitated the development of the draft National Social Protection Policy. The said ministry in supporting quality vocational training, paid skills apprenticeships and internships for young women and men, the draft National Social Protection Policy targets these groups and areas under the following two objectives: (1) improved vocational and tertiary financial assistance and (2) Employment creation, empowered women and youth.

26. The Government through the ministry responsible for gender equality and child welfare has made efforts to create awareness and sensitize people on issues pertaining to gender equality by promoting economic parity for women and advancing gender balance in decision-making, thus alleviating cases of gender-based violence. The Ministry in partnership with International IDEA, convened capacity building trainings/workshops on enhancing intra-party gender equality and women empowerment in Namibia. The first training was held in 2017, targeting women in senior party positions, the second training held the same year, targeted women in regional and local councils, the third training held in 2018, targeted the youth from different political party's youth leagues and the latest training held in 2019 targeted regional councillors.

27. Namibia, like many developing countries, has a number of social protection programmes such as old age pension, disability grant, funeral benefit, food bank and access to land and housing targeting vulnerable groups with the aim of cushioning them against the

adverse impact of poverty. Such programmes not only alleviate poverty, but also support economic growth.

28. The Government prioritizes vocational training and skills development. It has taken measures to increase girls' access to education and completion of their education, Technical and Vocational Education and Training (TVET) as well as skills development programmes. The Government has strengthened educational curricula to increase gender-responsiveness, eliminate bias at all levels of education, to provide gender equality, human rights training for teachers and other educational professionals. The said training to educational professionals and teachers is further aimed at promoting safe, harassment-free and inclusive educational environments for women and girls.

29. There are currently 97 training providers, in total who are registered with the Namibia Training Authority countrywide. Out of the 97 training providers, 21 are public providers while 76 are private providers. Below is information that shows the number of technical and vocational education and training graduates.

Table 3  
**Information that shows TVET graduates**

<i>TVET Graduates</i>			
<i>Year</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>
2015	2 234	1 618	3 852
2016	3 392	2 457	5 849
2017	5 074	3 674	8 748
2018	5 188	3 756	8 944
2019	2 453	1 810	4 263**

*Source:* Namibia Training Authority (NTA), 2019.

30. Below is a table that shows male and female in managerial positions at the Vocational Training Centres. (VTCs).

Table 4  
**Male and Female managerial positions at the VTC**

<i>Male</i>	<i>Female</i>	<i>Total</i>
3	2	5
3	1	4
3	1	4
3	1	4
2	1	3
1	0	1
15	6	21

*Source:* Namibia Training authority (NTA), 2019.

31. The Government continues to improve women's access to skills and training in new and emerging fields, especially STEM (Science, Technology, Engineering and Mathematics) and digital fluency and literacy which are fields historically considered male oriented. Below are tables that shows enrolment at the University of Namibia and the Namibia University of Science and Technology for Engineering and Mathematics (STEM) programme from 2015–2020.

Table 5  
**Enrolment at the University of Namibia for the Science, Technology, engineering and Mathematics (STEM) programme from 2015–2020**

<i>Academic Year</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>
2015	976	1 138	2 114
2016	998	1 222	2 220
2017	1 107	1 196	2 303
2018	1 185	1 305	2 490
2019	1 415	1 399	2 814
2020	1 227	1 310	2 537

*Source:* University of Namibia, 2020.

Table 6  
**Enrolment in the STEM field at the Namibia University of Science and Technology**

<i>Academic Year</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>
2015	1 390	2 434	3 824
2016	1 495	2 666	4 161
2017	1 540	2 714	4 254
2018	1 664	2 889	4 553
2019	1 850	3 106	4 956
2020	1 903	3 204	5 107

*Source:* The Namibian University of Science and Technology, 2020.

32. The Government through the Ministry of Labour, Industrial Relations and Employment Creation has made efforts to prevent discrimination in enjoyment of the right to work. It has through the implementation of Affirmative Action Act, 1998 (Act No. 29 of 1998) instituted procedures that contribute towards elimination of discrimination in the recruitment and promotion of women in both private and public sector. Every employer in Namibia is required to submit an annual affirmative action report to indicate the number of men and women from disadvantaged and advantaged backgrounds who are employed by the relevant employers.

### **Harmful practices against women and girls (response to recommendation 13 and 14)**

33. The Government acknowledges that there are some isolated cases of harmful cultural practices against women, girls and boys. The committee is invited to take note that certain cultural practices such as polygamy are largely viewed by many Namibian communities as not harmful. To this effect, the Government through the Law Reform and Development Commission (LRDC) is conducting research on customary marriages including polygamous marriage with a view of promulgating a specific law regulating such unions.

34. The Government acknowledges the importance of disseminating information on certain harmful cultural practices in society. As part of its efforts to disseminate information, the Government has implored tertiary institution to introduce gender sensitive courses. In this regard, the University of Namibia (UNAM), Namibia University of Science and Technology (NUST) and the International University of Management (IUM) have introduced courses and subjects on gender and development.

35. Article 19 of the Namibian Constitution guarantees the right to culture, provided that the enjoyment and practice of such a right does not infringe upon the rights of others or national interest. The Government submits that although harmful cultural practices tend to occur in isolated cases across the country and such practices are not tolerated. The Ministry

of Gender Equality and Child Welfare continues to engage traditional leaders on issues related to gender stereotypes and harmful practices. There are 14 community liaison officers stationed across 14 regions in the country and they educate and disseminate information on the negative impact of gender stereotypes and harmful practices. The Government continues to offer training to the media practitioners on gender responsive reporting, the training is aimed at preventing the sexualisation of women in the media.

36. The Child Care and Protection Act, (Act No. 3 of 2015) (CCPA) contains provisions, which proscribe harmful customary practices that affect women and children's rights including child marriage, early sexual activity and child bearing. Such marriages are against the law and once discovered the perpetrators may be charged with the contravention of Section 226 of the CCPA and other relevant laws.

### **Termination of pregnancy and access to contraception (response to recommendation 15 and 16)**

37. The Abortion and Sterilization Act 1975, (Act No. 2 of 1975) provides for circumstances under which women and girl child can access safe and legal abortions. The Government acknowledges that illegal and unsafe abortions do occur in the country. Nevertheless, medical treatment is offered without discrimination to women who had undergone illegal and unsafe abortions. The Government through the Ministry of Gender Equality and Child Welfare and the Ministry of Health and Social Services regularly carries out awareness campaigns on the alternatives to abortions, access to contraceptives and family planning services including the use of various contraceptives.

### **Customary marriage, widow inheritance and forced marriages (response to recommendation 17 and 18)**

38. The Government wishes to inform the Committee that the practice of lobola does not in any way violate women's rights. It is a form of a dowry paid by the groom and his family to the bride's family as a token of appreciation from the groom to the bride's family. Therefore, the Government has no plans to abolish this important and integral part of African culture.

39. Article 14 of the Namibian Constitution provides that marriage shall be entered into only with the free and full consent of the intending spouses between men and women of full age without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status. It further provides for the right "to marry and found a family".

40. Two types of marriages are recognised under Namibian law: Civil and customary marriages. Civil marriages are governed by the Marriages Act, 1961 (Act No. 25 of 1961) and the Married Persons Equality Act, 1996 (Act No. 1 of 1996). The rules governing customary marriages are uncodified and regulated by specific customs of the various traditional communities.

41. The new legislation on children is the Child Care and Protection Act, 2015 (Act No. 3 of 2015) which contains provisions, which proscribe harmful customary practices that affect women and children's rights including child marriage, early sexual activity and childbearing. Section 226 criminalises harmful practices and child marriages. A person who contravenes these sections commits an offence and is liable on conviction to a fine not exceeding N\$50, 000 or imprisonment for a period not exceeding ten years or both such fine and imprisonment".

42. Furthermore, the Government through the Ministry of Gender Equality and Child Welfare conducted a formative study on child marriages in Namibia. The purpose of this study was to describe the state of child marriages in Namibia to inform the development of evidence-based policies, legal reform, resource mobilization and programming. The same Ministry through its Gender Liaison Officers in the regions continues to make communities aware of the dangers of certain cultural practices as well as to encourage community members to report cases of these practices.

43. There is no overwhelming evidence to suggest that the practice of “widow inheritance” is widespread in the country, the majority of traditional communities do not subscribe to the practice of “widow inheritance.”

### **Enforced disappearance (response to recommendation 19 and 20)**

44. The state party takes note of the Committee’s concern and will consult with the relevant stakeholders in the matter.

### **Prohibition of torture and ill- treatment (response to recommendation 21 and 22)**

45. The Internal Investigation Directorate is not an independent entity, as it operates alongside other bodies such as the Namibian Police Force, which is guided by the Police Act and the Police manuals, administration manual. Members of the public can lodge complaints against the police at any local police station and are investigated by the Internal Investigation Directorate (IID), for the purpose of identification, prosecution and trial before ordinary courts. In the execution of its duties the IID makes recommendations at the conclusion of its cases. Cases of murder, attempted murder, assault with intent to do grievous bodily harm and common assault are registered against police officers. All persons are free to lay any criminal charges against any perpetrator including sex workers.

### **Torture, violence, including sexual violence against women, and the right to life (response to recommendation 23 and 24)**

46. The Government through the Ministry of Gender Equality and Child Welfare, continues to take measures to eliminate stereotypical gender roles. It does so by involving and targeting traditional leaders and the public at large by conducting awareness campaigns on the negative impact of discriminatory stereotypes on women’s enjoyment of their rights. The regional staff of the Ministry sensitised traditional leaders on gender and gender-based violence laws by conducting and organising workshops and training sessions on gender equality and gender related laws using the Namibia National Training Resource Kit on Gender Based Violence, which provides key messages and comprehensive insights into gender-based violence and how it can be tackled. The traditional leaders, rural teachers, youths and learners are the main targets.

47. The mandate of the traditional authorities includes dispute resolution and settlement of cases within the traditional community including matters of domestic violence and gender-based violence in accordance with specific customs and order the payment of compensation for victims.

48. The Government remains committed to implementing laws aimed at addressing violence against women and girls. Since the last report important pieces of legislation were promulgated to help alleviate cases of violence against women and girls. These are:

- The Witness Protection Act, 2017 (Act No. 11 of 2017):
  - This Act aims at protecting individuals who report cases of other forms of gender-based violence such as human trafficking and for the establishment of a Witness Protection Advisory Committee, protection programme and fund.
- The Child Care and Protection Act, 2015 (Act No. 3 of 2015):
  - This Act aims to give effect to the rights of children as contained in the Namibian Constitution and international agreements binding Namibia and to set out principles relating to the best interests of child.
- The Combating of Trafficking in Persons Act, 2018 (Act No. 1 of 2018):
  - The Act aims to give effect to the United Nations Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children,

criminalize trafficking in persons and other related offences and protect and assist victims of trafficking in persons, especially women and children.

- Basic Education Act, 2020 (Act No. 3 of 2020):
  - The Act aims to promote and regulate free and compulsory basic education; to ensure equitable inclusive quality education and lifelong learning; to promote and protect the right of learners to education; to provide for the establishment, accreditation, registration, governance and management of State and private schools and hostels; to provide for the establishment of the National Advisory Council on Education, the regional education forums, the National Examination, Assessment and Certification Board and the Teaching Service and the Education Development Fund.

49. The fight against GBV has been included in the National Development Plan (NDP5) under the social progression pillar with the target to reduce the scourge from 33% to 20 % by the end of 2022. Certain initiatives such as male engagement programmes, and male engagement training of trainer’s workshop on the use of the training manual for men and boys was conducted in October 2018 by the then Ministry of Gender Equality and child welfare.

Table 7

**Below are statistics on the number of participants in the above activities in recent years**

<i>Financial Years</i>	<i>Male</i>	<i>Female</i>
2016/2017	6 180	7 694
2017/2018	8 186	11 736
<b>Total</b>	<b>14 366</b>	<b>19 430</b>

*Source:* Ministry of Gender Equality and Child Welfare.

50. The Government through the Ministry (MGE CW) established a GBV and a Human Rights cluster with the aim to provide technical support for the implementation of the National Plan of Action on GBV. A new plan of action (2019–2023) has been launched with the focus of putting survivors first and to stimulate a culture of care and GBV-watch amongst families, communities and institutions.

51. The Government acknowledges that the rates on the so-called “passion killings” are relatively high in the country despite a plethora of laws in place to combat the scourge. In 2016, the Ministry (MGE CW) in collaboration with the United Nations Population Fund (UNFPA) conducted a national baseline study on gender-based violence in all 14 regions of the country and made the following recommendations to Government such as:

- (a) Each region is to have dialogues on the causes of gender-based violence, drawing up regional plans of action and identify funding for the implementations of the plans of action;
- (b) The Ministry should integrate gender-based violence messages on prevention and response in the national campaigns. The study suggests innovative prevention strategies such as social media both as a tool for the perpetuation of gender-based violence and a potential tool for preventing and addressing it;
- (c) The research highlighted the need for greater integration of services and strengthening of coordination amongst service providers including data management;
- (d) The report highlights the urgent need to scale up interventions and to expand services outside Windhoek to rural areas where gender-based violence rates are highest and service levels are least available;
- (e) It proposes a legal review to bring some of the statutory and customary laws in conformity with the Convention on the Elimination of all Forms of Violence against

Women (CEDAW). The research highlights the urgent need to address alcohol abuse which is a key trigger for gender-based violence;

(f) The research recommends the establishment of a gender-based violence fund with multi-stakeholder contributions to help address the numerous resource and capacity constraints;

(g) It recommends that a gender-based violence network for civil society organisations as a best practice that Namibia could adopt;

(h) The Ministry of Education, Arts and Culture should integrate gender-based violence messages in the national campaigns such as “My Namibia, My Pride Campaign”.

52. Although the majority of passion killings are committed by men who in most instances commit suicide after killing the victim, the Namibian police and the Prosecutor- General continue to promptly investigate and prosecute crimes of the so-called passion killings. All perpetrators once found guilty are punished and sentenced in accordance with the law. The following cases dealt with passion killing and domestic violence:

53. In the case of *S v Diergaardt*<sup>1</sup> the accused was convicted of Murder read with the Provisions of the Combating of the Domestic Violence Act, (Act 8 of 2003). The court held that gender-based violence is totally unacceptable and those found guilty will be severely punished because the interest of society far outweighs the personal circumstances of the accused. The accused was sentenced to thirty-five years imprisonment (35) of which five (5) years were suspended.

54. In the case of *S v Cloete*,<sup>2</sup> the accused was charged with the crime of housebreaking with Intent to Murder and Murder read with the provisions of the Combating of Domestic Violence Act. At the time of the incident the accused and the deceased were involved in an actual romantic relationship in that they had a child together. The court held that though it is mindful of the fact that the accused is a first offender, the crime committed is of such a serious nature and crimes of violence against women are on the rise country wide and the courts have a duty to pass sentences that have a retributive effect, and which will send a clear and unequivocal message to society that such behaviour cannot be tolerated or condoned. The accused was sentenced to 32 years imprisonment.

55. To address some of the barriers in relation to prosecuting perpetrators of domestic violence, and to increase women’s access to justice, more courts have been built country wide. In terms of the Combating of the Domestic Violence Act, 2003 the courts continue to issue protections orders against perpetrators and would be perpetrators of violence against women and children. Below is a table that shows an increase in the number of courts and the number of magistrates countrywide in Namibia.

Table 8

**Shows the increase in the number of courts and magistrate’s country wide**

<i>Information Required</i>	<i>Response</i>
Number of Magistrate Courts in Namibia	34
Number of Magistrates in Namibia	89
Number of Periodical Courts in the Country	37
Information showing whether justice is accessible to women in rural area	The office of the Judiciary has courts in a number of remote areas of Namibia, including the holding of periodical courts.  There are currently no surveys that indicate whether there are impediments that hinder women to access the courts, be it due cultural, financial factors or because of the remoteness of the court.

<sup>1</sup> (CC 12/2016) [2019] NAHCMD 454 (05 November 2019).

<sup>2</sup> (CC 01/2015) NAHCMD 10 (30 January 2018).

56. There is a dedicated Domestic Violence Court situated in Windhoek which solely deals with domestic violence matters. The Magistrate courts which are based in the regions dedicate certain days of the week to focus on opposed domestic violence matters. On 01 December 2019, the Office of the Judiciary embarked on a country wide project in order to ensure access to justice after hours. The project ended on the 31 January 2020. One of the aims of the project was to ensure that there is a Magistrate on duty (after hours and during weekends) to consider ex parte applications for domestic violence protection orders in terms of the Combating of the Domestic Violence Act, 2003 (Act No.3 of 2003).

57. The Government through the Ministry of Safety and Security has established 17 Gender Based Violence Protection Units in all 14 regions and continues to provide safety measures to victims of gender-based violence. A multi sectoral approach is adopted and is responsible for protection, care and treatment services. The MGECW, and other stakeholders have eleven (11) GBV, VAC and TIP shelters across the country. However, there are three (3) shelters run by non-governmental organisations that are currently operating. There are nine (9) shelters under the government, which five (5) of them were renovated and equipped, but not yet functioning.

58. Victims of GBV, including of rape, receive treatment as well as HIV pre- and post-test counselling at most public health facilities. During April 2019, the Ministry of Health and Social Services launched the 'Clinical Handbook on the Health Care of Survivors Subjected to Intimate Partner Violence and Sexual Violence'. Fifty-four (54) health professionals, including medical officers, social workers and nurses received training on the implementation of the handbook at the health facilities. The handbook is a guide for all health care providers who may care for survivors of gender-based violence such as physical, sexual or emotional violence by a partner or in the case of sexual violence by any perpetrator.

59. Victims of GBV including rape and sexual harassment are protected from stigmatization and from reprisals. Section 9 and 10 of the Combating of Rape Act, 2000 places duties on Prosecutors and members of the Police to provide information on the court processes and bail applications to complainants in order to lessen trial trauma.

60. The Ministry of Health and Social Services (MoHSS) provides information on clinical management of GBV. Rape Kits are available at all health facilities including Pre-Exposure Prophylaxis (PrEP) which is available to people who are HIV negative but at a very high risk of getting HIV. To ensure that witnesses to crimes pertaining to domestic violence are protected, the Government has passed the Witness Protection Act, 2017 (Act No. 11 of 2017) which provides for the protection and assistance to witnesses of crime.

61. The Namibian Police Force in conjunction with the United Nations Office on Drugs and Crime (UNODC) embarked upon a multi-disciplinary training for police investigators, prosecutors and social workers during October 2017-July 2018 on victim centred and human rights approach in terms of service delivery to survivors/victims of Gender based violence/violence against women (VAW)/violence against children (VAC). There was a total of eight (8) trainings conducted and two hundred and thirty (230) professionals were trained.

62. A gender-based violence manual was developed for MGECW by the Legal Assistance Centre of Namibia (LAC) and launched in March 2019 and 100 respondents were trained in four (4) regions. Pilot trainings were conducted on the Standard Operating Procedures (SOPs) for the Gender Based Violence multi-disciplinary team during October 2018-September 2019 and over two hundred (200) professionals were trained which included medical doctors, police officers, social workers and prosecutors. The training manual was also adopted by civil society organisations in order to streamline and build intersectionality of the national framework of GBV. There are plans to facilitate a sensitization for the judiciary on the handlings of GBV/VAW/VAC cases.

63. Under normal circumstances once a GBV case is reported to the Namibian police it becomes a state's case. Although there is no law that prohibits the withdrawal of the cases, complainants are discouraged from withdrawing cases. Complainants are educated on the disadvantages of withdrawing their cases and are encouraged to proceed with their trials. The state conducts prosecution on behalf of the complainant.

64. The National Safe Schools Framework (NSSF) was developed to promote the health, safety and wellbeing of learners and other school stakeholders in Namibia. It is meant to assist in implementing safe practices and programmes in the schools. It provides teachers and other school personnel with practical tools and ideas for improving safety levels in schools in a step by step manner and guides them on how to promote safe and supportive school communities.

### **Trafficking in persons and forced labour (response to recommendation 25 and 26)**

65. There have been reported cases of trafficking in persons and forced labour during the reporting period. However, the Government wishes to inform the Committee that it has enacted the Combating of Trafficking in Persons Act, 2018 which gives effect to the United Nations Protocol to prevent, suppress and punish trafficking in person especially women and children.

66. The definition of trafficking covers both forced labour and sexual exploitation and has similar provisions to Annex II of the United Nations Convention against Transnational Organised Crime which covers both sex trafficking and trafficking for forced labour. Furthermore, the Labour Act, 2007 (Act No. 11 of 2007) prohibits all forms of forced labour, including child labour. The Combating of Immorality Practices Act, 1980 (Act No. 21 of 1980) prohibits child prostitution. During the period under review for the trafficking in persons report, the state party's accomplishment among others in addressing trafficking was as follows:

(a) The National Referral Mechanism and Standing Operating Procedures for trafficking in persons for the identification, protection and safe return of victims of trafficking was approved by Cabinet. Namibia has been upgraded to Tier1 country in the 2020 trafficking in person report for fully meeting the minimum standards for the elimination of human trafficking, Namibia is currently the only country in Africa to have achieved a Tier1 ranking joining 34 nations globally.

(b) The Government of the Republic of Namibia in collaboration with the International Organisation for Migration (IOM) has compiled a training manual for law enforcement and prosecutors, as well as a pocketbook for frontline members of the Namibian Police Force.

(c) A multi-disciplinary training on trafficking in Persons for criminal justice practitioners was held between the 05-09 February 2018. The training covered two (2) regions being the Otjozondjupa and Erongo regions. The trainees consisted of immigration officials, customs officials, labour officials and eight (8) police officer, Public Prosecutors and Social Workers.

(d) The Namibian Police Force conducted a training on Trafficking in Persons (TIP) to seventy (70) immigration Officials at Lucius Sumbwanyame Mahoto Correctional Service Training College in July 2018 and another training was held in November 2018 at the same venue and fifty-nine (59) Immigration Officials were trained. Moreover, the Namibian Police Force conducted another training on TIP to thirty-five (35) participants at a Social Workers Workshop at Okahandja in the same period.

(e) The Government through the MGECW focused on campaigns to address awareness amongst the public and has worked in collaboration with the International Organization for Migration (IOM) to carry out an awareness campaign titled: "Strengthening coordination to respond to Trafficking in Persons and ensure Justice and protection for all victims of Trafficking in Persons in Namibia". The campaign was aimed at strengthening efforts to coordinate anti- trafficking responses, prosecute traffickers and protect victims of trafficking. The campaign mainly includes developing information, education and communication (IEC) materials on trafficking in persons for Namibia.

(f) A multi-disciplinary training for 35 criminal justice practitioners was conducted on the 16-20 September 2019 in Eenhana, Ohangwena Region. The training included police investigators, prosecutors, immigration officials, customs officials and social

workers on identifying and assisting victims of TIP and the investigation and prosecution of TIP cases. The training was conducted with the financial assistance of United Nations Office on Drugs and Crime (UNODC).

(g) A Judicial Colloquium on TIP for about 30 judicial officials of Namibia was conducted by UNODC on the 23-24 September 2019 in Windhoek.

(h) A national awareness campaign for TIP was launched on the 29 March 2019 to create awareness under the theme “beware Namibia’s” Human Trafficking is real.” The communication material of this campaign included billboards erected in three (3) towns; pamphlets on the basic knowledge on TIP; radio drama series, posters, pens, media engagement platforms and a song composed to warn the young people against TIP.

67. The Government is aware of the complexities involved in combating trafficking in persons and forced labour. Nevertheless, the Government with its limited resources has made improvements in the investigations of most human rights violations relating to trafficking and prosecuting the perpetrators. The case of *State v Lukas*,<sup>3</sup> was the first successful case of human trafficking in Namibia, in which section 15 of the Prevention of Organised Crime Act was used and resulted in a 13-year conviction. Apart from the above case there are still other cases pending that are under investigations. The table below shows statistics of cases of human trafficking for the years 2014–2019.

Table 9  
**Trafficking in persons cases 2014–2019**

<i>Reported</i>	<i>Finalised</i>	<i>Under investigation</i>	<i>At court pending trial</i>
40	6	15	19
	Conviction – 2		
	Not guilty – 0		
	PG declined to prosecute–4		

*Source:* Namibian Police Force.

68. Section 13 of the Prevention of the Organised Crime Act, 2004 (Act No. 29 of 2004) provides that appropriate services should be rendered to victims of trafficking irrespective of their nationality. Basic needs such as safe accommodation, meals, clothing, toiletries, psychosocial support, legal assistance, medical services, access to documents service, and access to education is provided to the victims of trafficking. This is done by ensuring all victims receive basic services once admitted in a shelter, or in the after-school centre or the Namibian children ‘s home. Currently it is only Social Workers or Police Officers who can facilitate and take a victim for admission to a shelter. At the shelter, three meals (3) per day and clothing are provided. The shelters are equipped to provide medical, psychosocial, legal or home affairs and immigration related services, and are linked to such services by the Social Worker.

69. Section 19 and 20 of the Organised Crime Act, 2004 makes provisions for health care and education service providers to assist children who are victims of trafficking and foreign victims. The table below shows statistics for the disaggregated number of traffickers (children, adults) by type of offence (forced labour vs sex trafficking), this includes Namibian nationals and foreigners.

<sup>3</sup> (CC 15/2013) [2015] NAHCMD 186.

Table 10  
**Statistics for the disaggregated number of traffickers by type of offense (forced labour vs sex trafficking)**

Sex		Age		Nationality	Traffickers involved		Exploitation
Male	Female	Adult	Minor		Male	Female	
2			2	Namibian	1	Congolese	Unknown
4	2		4	Angolan	1	Namibian	Domestic Labour
	1		1	Angolan	2	1 Namibian	Domestic Labour
2			2	Zambian		1 Namibian Female	Domestic Labour
	1		1	Zambian	1	Namibian	Unknown
2			2	Angolan	1	Angolan	Domestic Labour
	1		1	Namibian	1	Pakistani Male	Sexual exploitation
						1 Namibian Female	
	1		1	Namibian	1	1 Namibian	Sexual exploitation
	6		6	Namibian	4	Namibian	Sexual exploitation

Source: Trafficking in Persons Report Questionnaire, 2019.

70. The Government through the Ministry of Labour, Industrial Relations and Employment Creation has an existing procedure to oversee and regulate labour recruitment agencies to prevent the unlawful recruitment of potential victims of human trafficking. In an effort to buttress the regulation of labour recruitment agencies, Parliament passed the Employment Services Act, 2011 (Act No. 11 of 2011). This Act regulates employment agencies and requires employment agencies to register as employment private agencies with the Ministry of Labour, Industrial Relations and Employment Creation in order to be granted a licence that enables them to recruit employees in Namibia. The said licence could be suspended, if the Director of Labour Market Service has reasonable ground to believe that the employment agency, does not operate in accordance with the law.

71. The Domestic Workers Wage Order regulates working conditions of domestic workers by outlining procedures on the employment of a domestic worker for both citizens and foreigners. During the 2018 period under review, the Ministry of Labour, Industrial Relations and Employment Creation employed Fifty-Seven (57) labour inspectors across the country. The said Ministry is expected to further employ more labour inspectors in the next financial year 2020/2021. In addition, Namibia ratified the International Labour Organisation (ILO) Convention (C02) and Protocol (P029) that supplements the Convention of 2000 and 2017. Namibia also ratified the Protocol on forced labour and the Convention on labour inspection in 2017 and 2018. In order to suppress forced labour, Article 9(2) of the Namibian Constitution, provides that no person shall be required to perform forced labour.

72. During the 2019 period under review, the Ministry of Labour, Industrial Relations and Social Welfare employed 77 labour and occupational health and safety inspectors, who were responsible for enforcing laws against child labour.

### **Police custody and pre-trial detention (response to recommendation 27 and 28)**

73. The Namibian legal system affords all accused persons the right to appear before the court within 48 hours after being arrested. If they are not brought to court within the 48 hours, they are eligible to be released. The deprivation of one's freedom was dealt with in the case of *Minister of Safety and Security v Kabotana*,<sup>4</sup> The court stated that article 11(3) is an aspect of the fundamental right to liberty guaranteed by article 7 and that the 48-hour requirement is undoubtedly an important constitutional right accorded to arrested persons which, in the

<sup>4</sup> 2014 (2) NR 305 (SC).

light of our pre-independence history of detention without trial and other related injustices, should be guarded jealously. This article finds its place in the Constitution solely for the benefit of arrested persons and not for the benefit of the state.

74. During the reporting period, a total number of One-Hundred and Sixty-Seven (167) civil claims relating to unlawful arrest and detention were brought against the Government. Nine (9) of these claims were successful and resulted in the victims being compensated. During 2019, the Ministry of Safety and Security in collaboration with the Legal Assistance Centre (LAC) developed a human rights manual on arrest and detention. It is expected that this initiative will drastically reduce cases of unlawful arrest and detention. The table below shows the number of civil claims that were reported.

Table 11  
**The breakdown of claims per financial year.**

<i>Year</i>	<i>No. of civil claims reported</i>	<i>No. of successful claims in which the victims were compensated</i>
2015	49	6
2016	25	2
2017	28	1
2018	27	0
2019	38 to date	0

*Source:* Office of the Attorney-General, 2019.

### **Right to fair trial (response to recommendation 29 and 30)**

75. We refer the committee to the information contained in the last report which was reviewed in 2016.

### **Tree legal aid (response to recommendation 31 and 32)**

76. The Government recognises that access to justice is among the most important fundamental rights covered under various international and regional human rights instruments. As per the last report, the Government provides legal aid to indigent persons who are unable to afford the costs of litigation. It is worth taking note that the Namibian legal aid scheme is based on a “means test”. This means that only applicants who are unemployed and those who earn less than N\$2500 can qualify for this scheme. However, consultations between the Ministry of Justice and other relevant stakeholders from the legal fraternity have been held to find ways of making the legal aid scheme easily accessible as well as to find alternatives to funding the said scheme. Changes to the requirements to the “means test” have also been discussed during the said consultations.

77. In addition, during 2016, the Law Society of Namibia (LSN) embarked on a comprehensive “Change Project” which aims to examine the legal profession in Namibia and propose reforms that will make the profession accessible, relevant and responsive to Namibian society. The scope of the research was established through consultations with all stakeholders in the legal profession. An independent committee of expert researchers was appointed to draft the research methodology which was approved by the Namibian Statistics Agency. The survey portion of the research was conducted by a professional, independent survey company. Surveys were conducted amongst all members of the LSN, as well as the consumers of legal services.

78. The interviews were also conducted with key stakeholders. An international benchmark study was also outsourced. The results of the research were analysed by the LSN change project steering committee who compiled a comprehensive change document, which contained proposals for legislative and systems changes to give effect to the research conclusions. The change document was used to draft a new Legal Practitioners Bill, which

Bill was provided to the Minister in 2019. The faculty of law at the University of Namibia has its own legal aid clinic which also assist indigent persons who cannot afford to hire private lawyers.

79. The Directorate of Legal Aid in the Ministry of Justice employs full time legal officers to assist them in criminal and civil matters. At present the relatively low number of legal aid counsel are mostly stationed in major urban centres and this impairs the ability of rural dwellers to access judicial services. However, the Ministry of Justice intends to increase the number of legal aid counsel across the country subject to the availability of funds.

80. The Government promulgated the Judiciary Act, 2015 (Act No.11 of 2015). The aim is to strengthen the independence of the Judiciary in line with Article 78(5) of the Namibian Constitution, and to provide for the administrative and financial matters of the Office of the Judiciary.

### **Detention conditions (response to recommendation 33 and 34)**

81. The Government continues to make progress in ensuring that the rights and welfare of offenders are protected and promoted in places of detention. As alluded to in the previous reports, the Namibian justice system has moved from a retributive approach to a rehabilitative approach in relation to convicted offenders.

82. The Namibian Correctional Service (NCS) has a health policy that addresses all the health issues of the inmates including public health problems like Tuberculosis, HIV/AIDS, Hepatitis and other infectious and contagious conditions. The Namibian Correctional Service Health Policy advocates for equal health standards to be offered to the inmates as they would be given to the general public. It also allows those inmates who can afford private health care services to access those health services.

83. The correctional facilities and the conditions in these facilities are in compliance with the Nelson Mandela Rules. The NCS has undertaken measures to renovate all of the country's correctional facilities with the aim of improving the living conditions of offenders. In April 2019 the NCS completed the female correctional centre at Windhoek Correctional Facility which was inaugurated on 12 June 2019. The facility is for accommodating sentenced female offenders of all security levels and also trial awaiting offenders. The authorised capacity of the facility is 170 female offenders, currently there are 101 female offenders. At the facility the offenders are involved in various rehabilitation programmes including psychosocial support rehabilitation programmes; educational programme and skills training through various projects such as tailoring, cake baking, basket weaving and small-scale gardening.

84. The male section of those individuals who are awaiting trial at the Windhoek correctional facility is undergoing renovation to further improve the living conditions of offenders/inmates.

85. The organisational structure of the NCS makes provision for the constructions of remand facilities that will accommodate trial awaiting inmates. These remand facilities will be located at Rundu, Ondangwa, Grootfontein, Windhoek, Walvis Bay, Keetmanshoop and Outapi. The NCS started with the construction of a new correctional facility at Ondangwa and the current Oluno correctional facility will be converted into a remand facility. Due to financial constraints upgrading of other correctional facilities and remand facilities have been placed on hold.

86. The NCS permits offenders to receive visitors, letters, food, clothing and other necessities as may be permitted from outside, and it is done under strict examination for security purposes. These privileges are aimed at promoting and maintaining a relationship between offenders, family and the community and facilitating the successful reintegration of the offenders into the community as provided for in terms of Section 77 of the Correctional Service Act, 2012 (Act No. 9 of 2012).

87. Section 110 of the Correctional Service Act, 2012 makes provision for offenders/inmates to be released on day parole and it allows offenders to leave the correctional facility under the supervision of the correctional officer for short periods to work

outside, attend school for training and examination. In addition, the State President has a prerogative to pardon convicted/serving offenders who have expressed sincere remorse, offenders with severe terminal illnesses, as well as offenders who are over the age of 60. These pardons normally occur during the country 's independence celebrations.

### Expulsion and detention of asylum seekers (response to recommendation 35 and 36)

88. The Government has a long-standing policy of welcoming and affording refugees and asylum seekers protection in the country and treats them equally without any discrimination based on their sexual orientation and gender identity. No refugee or asylum seekers has been expelled or returned to countries where their lives or freedoms would be threatened. Moreover, refugees are issued with identity cards and travel documents to enable them to move freely within the country and outside. No exit notices have been issued to any refugee or asylum seekers in Namibia.

89. Unaccompanied minors are given special treatment when it comes to refugee status determination. Unaccompanied or separated children are interviewed with the assistance of the social worker if they are younger than 16 years. The children are asked to give their narrative to allow the refugee status officers to get the background information to give to the Namibia Refugees Committee. They are placed under the supervision of families that came from the same area/country. In cases of unavailability of foster parents, they are placed at the transit centre to be monitored by the social worker. Namibia re-affirms its reservation on Article 26 on the UN Convention on the Status of Refugees (1951).

90. The Government has undertaken various local integration measures in relation to skilled refugees. Some refugees are employed in various sectors of the Namibian economy, such as education, agriculture and transportation. The refugee children of school going age are enrolled in school at Osire Refugee settlement and various public-schools country wide. The settlement has a clinic, and personnel to attend to those requiring health services. The Osire refugee settlement has a Police Station which is tasked with maintaining law and order at the settlement. Various Non-governmental organisations, both local and international assist Government by providing technical and financial assistance to the settlement.

Table 12  
Shows disaggregated data for asylum seekers and refugees in Namibia from 2017–2018

Country of Origin	00–04 years		05–11 years		12–17 years		18–59 years		60+ years		Total		Grand Total
	M	F	M	F	M	F	M	F	M	F	M	F	
	Burundi	7	9	1	4	1	1	16	9	0	0	25	
Democratic Republic of Congo	87	73	79	57	40	39	207	107	3	1	416	277	693
<b>Grand Total</b>													<b>741</b>

Source: Ministry of Home Affairs and Immigration, asylum seekers and refugees' statistics for the year 2017.

Country of Origin	00–04 years		5–11 years		12–17 years		18–59 years		60 Years		Total		Grand Total
	M	F	M	F	M	F	M	F	M	F	M	F	
	Burundi	2	5	0	1	1	2	17	1	0	0	20	
Cameroon	0	0	1	1	2	0	8	4	0	0	11	5	16
Central African Republic	6	1	2	2	0	0	3	3	0	0	11	6	17
Democratic Republic of Congo	94	105	75	63	44	44	233	154	3	6	449	373	822

Country of Origin	00–04 years		5–11 years		12–17 years		18–59 years		60 Years		Total		Grand Total
	M	F	M	F	M	F	M	F	M	F	M	F	
Eritrea	0	0	0	0	0	0	1	0	0	0	1	0	1
Rwanda	0	2	0	0	0	0	0	1	0	0	0	3	3
Somalia	0	0	0	0	0	0	2	0	0	0	2	0	2
South Sudan	0	0	0	0	0	0	1	1	0	0	1	1	2
<b>Grand Total</b>													<b>892</b>

Source: Ministry of Home Affairs and Immigration, asylum seekers and refugees' statistics for the year 2018.

### **Monitoring surveillance and interception of private communication (response to recommendation 37 and 38)**

91. The right to privacy is a constitutional guarantee and the Namibian Government protects this right, the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997) prohibits the interception and monitoring of private information and communication under section 24(1). A person's private communication can only be intercepted with the permission from the judicial officers after meeting the criteria set out under sections 24(2) and 25 of the Namibia Central Intelligence Service Act, 1997. The proposed Part 6 of the Communication Act, 2009 (Act No. 8 of 2009) provides for the interception of telecommunications, however, it is not yet operational.

### **Freedom of expression (response to recommendation 39, 40, 41 and 42)**

92. The Government takes note of the committee's concern and is committed to the provisions of human rights enshrined in the Namibian Constitution and has instituted policies that are aimed at making Namibia have free media. Article 21 of the Namibian Constitution provides for freedom of the press. Furthermore, journalists are expected to behave professionally and report with integrity. The Government has not recorded any form of human rights violations against journalists.

93. The Government has retained its global ranking position of 23<sup>rd</sup> out of 180 countries at the World Press Freedom report for the year 2020. Journalists in Namibia enjoy relative freedom of expression in the execution of their work. The Government values media freedom and implements a self-regulated media framework which provides structures such as the Media Ombudsman and Namibia Open Forum to deal with complaints against the media.

94. The Editors Forum of Namibia (EFN) was established to represent all media institutions in the country, which has a mechanism to hear and decide on complaints against the media. The EFN has also developed a charter that allows other entities to be able to interact with the media. In addition, the Media Ombudsman handles all complaints against the media.

95. The Government through the Ministry of Information and Communication Technology is in the process of establishing a multi-stakeholder national committee that will deal with issues of safety of journalists. The Committee will be comprised of representatives from various government and non-governmental institutions.

96. The Namibian justice system is accessible to all Namibian citizens and the courts are independent, and any individual whose rights are violated including journalists can approach the relevant authority to lay charges for justice to take its course. The Windhoek Declaration on Press Freedom was developed on the 29 April 1991, and this Declaration is a clear testimony that the Constitution is respected and upheld as the highest law of the land.

97. The Minister of Information, Communication and Technology has tabled the Access to Information Bill in Parliament. The Act once promulgated, will make it easier for

Namibians to access Government information. Government recognises the need for information to be freely or cheaply available to the public through a variety of means. Government ministries are under an obligation to publish newsletters about their mandate and avail the said newsletters to the public at easily accessible points. The Government has undertaken reforms to enhance public access to relevant government information. It includes the approval and implementation of the Social Media Policy, which has contributed to enhanced levels of engagement and embraced as an effective tool for public information dissemination.

98. The Government through the Ministry of Information and Communication Technology (MICT) is tasked with the duty of disseminating all government information to the public. Furthermore, the Namibian Broadcasting Corporation (NBC) which is a public broadcaster is also tasked with the responsibility of disseminating information to the public. The office of the Ombudsman assists government in disseminating information on human rights to the public through awareness campaigns, production of newsletters and radio programmes. All Offices, Ministries and Agency's (OMA's) can also provide relevant information to the public.

99. The freedom to express and disseminate one's opinion is guaranteed in Namibia. Namibians can air their grievances against government institutions in a variety of ways. They can do so via a call-in programme on national NBC radio called "the peoples parliament". They can also air their opinions freely in local newspapers without any intimidation from the state. Most Namibian media houses are privately owned and operate independently without fear from the state. In this regard, they serve as a pillar in promoting the right to freedom of speech.

100. The University of Namibia does not have a policy or guideline that affirms academic freedom. However, in its academic research and administrative activities, the university does take into account Article 21 of the Namibian constitution. The Office of the Vice-Chancellor is currently busy with a desk study to benchmark best practices in Africa, based on the ILO/UNESCO recommendations concerning the status of higher- education teaching personnel, specifically regarding four indicators namely: institutional autonomy, individual rights and freedoms, institutional self – governance and tenure. On completion of this exercise, a policy with procedures and guidelines will be formulated. The Namibian University of Science and Technology has no published guidelines pertaining to academic freedom. However institutional autonomy and academic freedom of speech are provided for in the Namibia University of Science and Technology Act, 2015 (Act No. 7 of 2015).

### **Rights of minorities (response to recommendation 43 and 44)**

101. As per the last report, Article 100 of the Namibian Constitution vests all-natural resources in the state. However, traditional authorities by law are allowed to administer lands and natural resources on behalf of the state. The Government created a division for the marginalised communities under the Office of the Vice-President to ensure the full protection and implementation of their rights under this covenant, integrate them into the mainstream economy, monitor and evaluate the impact of measures taken.

102. The Government believes that consultation and the involvement of the marginalised communities are crucial to developing projects, policies and legislation that affect them. Project planning and development begins with requests from the communities and their leadership on what their needs are. This is done through carrying out thorough assessment on the predicament of the targeted communities. Formulation of programmes and implementation thereof always involves the marginalised communities, especially their leadership. These communities are implementing their own projects with the support of the Division.

103. The Office of Vice-President regularly engages with stakeholders such as Governmental institutions, NGO's, and Civil Societies to implement the mandate of marginalised communities. The Government in 2017 made a commitment to draft the White Paper on Indigenous Peoples. In 2019, the White Paper on Indigenous People was submitted to the Attorney – General, and it is currently awaiting submission to Cabinet. The White

Paper is a regulatory framework that guides the Division of the Marginalised Communities and constitutes policy guidance for promoting and protecting the rights of the marginalised communities by ensuring their inclusion in a strong, resilient and tolerant Namibian House.

104. The Government has made considerable progress in providing land to the marginalised communities. A Commission of Inquiry on the claims of ancestral land rights and restitution was commissioned by the Head of State in 2019. The Commission need to identify alternative restorative measures to restore social justice as well as ensure economic empowerment of the affected communities. In addition, coordinators were also appointed from the affected communities as focal persons. The responsibility of this coordinators is to mobilize communities to stand up for their rights and to report any kind of discrimination against them and to mobilize themselves to take charge of their development.

105. The extraction and exploration of natural resources such as minerals is regulated by the Minerals (Prospecting and Mining) Act, 1992 (Act No.33 of 1992). In terms of this Act all prospecting and exploration rights are vested in the State and the power to grant mining licenses vests in the Minister of Mines and Energy. The Namibian Constitution by virtue of Article 100 provides that land, water and natural resources below and above the surface of the land in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.

106. In addition, section 3(2)(b) of the Environmental Management Act, 2007 (Act No. 7 of 2007), provides for the involvement of the community in natural resources management and that the sharing of benefits arising from the use of the resources must be promoted and facilitated.

### **III. Articles of the Covenant (1–27)**

#### **Article 1**

#### **The right to self-determination of peoples**

107. Namibia is a unitary state by virtue of Article 1 of the Constitution. The Government recognises limited self-determination to traditional authorities. Since customary law is recognised under the Constitution, the state upon application by a particular community and/or ethnic group may grant recognition to such a group. In terms of the Traditional Authorities Act, 2000 (Act No. 25 of 2000). The said traditional authorities have limited control over land, grazing as well as water rights in communal areas. The Traditional Authorities Act, 2000 (Act No. 25 of 2000), the Communal Land Reform Act, 2002 (Act No. 5 of 2002) and the Community Courts Act, 2003 (Act No. 10 of 2003) governs the affairs of Namibia's traditional authorities.

108. Traditional leaders in the country are appointed on the basis of the customary laws of their particular community. The jurisdiction of community courts has been developed to leave the common law distinction of criminal and civil matters aside and give respect to the perception of compensation under customary laws. In other words, customary law compensation balances the economic side of the loss, but also has, in terms of the conventional criminal/civil matter dichotomy, a punitive element. Therefore, some matters although handled by the national courts, can also be handled by traditional authorities based on their customary laws.

109. In addition to the information contained in response to the recommendation 43 and 44 above, in order to ensure that Namibians, including marginalised communities, have access to the country's natural wealth and resources, the Government issued additional conditions to the allocation of Mining Licences (MLs) to be included in notices of intention to grant new MLs. The conditions are contained in the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992).

## Article 2

### Implementation of the Covenant at national level

110. By virtue of Article 144 of the Namibian Constitution, Namibia follows a monist system in the implementation of international law. This means that provisions of the Covenant where necessary can be invoked by courts of law. In the case of *Jaco Kennedy and Kevin Townsend vs Minister of Safety and Security and 5 others*.<sup>5</sup> The two applicants challenged the respondent for putting handcuffs on them while being transported to the trial court while they are still unconvicted trial awaiting inmates. They contended that this kind of treatment is inhuman, cruel and degrading as it violates their fundamental rights as stipulated in Article 8 (1) of the Namibian Constitution and Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR). The court, relying on the Supreme Court judgment in the case of *Namundjebo and Others v Commanding Officer, Windhoek Prison and Another* 1999 NR 271 (SC), held that the conduct of placing unconvicted trial awaiting persons in chains and other mechanical restraints like handcuffs is unconstitutional on the basis that it is, ‘under any circumstances’, offensive of Article 8 of the Namibian constitution. and Article 10(1) of the ICCPR. In this case the applicants relied on the provisions of the ICCPR to make their claim, and the Court in granting judgment interpreted and relied upon the same provisions, this is an indication that the ICCPR is used by the right holders and the courts in Namibia.

111. In efforts to implement the provisions of the Covenant, the Government has develop policies and enacted laws aimed at protecting its citizens against discrimination and other human rights violations. In 2019, parliament passed the Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018.) The said Act provide for the repeal of certain obsolete laws. The intention of the Act is to remove 143 proclamations, ordinances and Acts from the statute books. Many of these laws, by-laws, regulations, proclamations and ordinances are discriminatory on the grounds of sex, race, colour, ethnic origin, religion, creed and social and economic status.

#### Dissemination of information about the Covenant

112. In an effort to disseminate information about the Covenant, the state party has undertaken the following measures:

(a) In 2016 the Government of the Republic of Namibia through Inter-Ministerial Committee on Human Rights and International Humanitarian Law (IMC) chaired by the Ministry of Justice with the assistance from the United Nations Population Fund (UNFPA) compiled two booklets on the outcome of Namibia’s Universal Periodic Review under the Human Rights Council on the following Treaties/Conventions: Convention on the Elimination of All Forms of Discrimination Against Women.(CEDAW), the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on All Forms of Racial Discrimination (ICERD). The said booklets were then distributed to university and community libraries across the country, local NGOs as well as to political parties;

(b) In the same year (2016) the Government through the Ministry of Justice in conjunction with the University of Namibia held a public lecture on Namibia’s human rights obligations under various UN human rights treaties including CEDAW;

(c) In 2017, the Government embarked on a project to publish a compendium of all human rights reports that Namibia has submitted to various treaty bodies since 1992. The said compendium which includes all the State reports was also distributed to universities, parliamentarians and local NGOs for further dissemination to members of the public countrywide; and

(d) The Office of the Ombudsman also carried out nationwide dissemination campaigns of Namibia’s implementation of its obligations under various human rights treaties.

<sup>5</sup> HC-MD-CIV-MOT-GEN-2017/00393, Heard: 06 December 2019, Delivered: 16 July 2020.

### Article 3

#### Equality of rights between men and women

113. Laws and mechanisms in place to combat all forms of gender discrimination remains the same as stated in the last report. However, government has made steady progress in ensuring that women are represented in managerial positions in both the public and private sectors. Below is a statistical table showing women's representation in the workforce.

Table 13  
**Workforce Profile**

	<i>Male</i>	<i>Female</i>	<i>Total Labour Force</i>
Labour force Survey 2016	510 044	516 224	1 026 268
Labour Force Survey 2018	535 412	554 741	1 090 153

*Source:* Ministry of Labour, Industrial Relations and Employment Creation, 2020.

114. Government has made great strides in ensuring that women are represented in politics. According to the Inter-Parliamentary Union (2017), Namibia currently ranks 12th globally and fourth on the African continent for the proportion of women in Parliament. The representation at the 6th National assembly indicates that, 46 members of parliament were females and 58 were male. The statistics for the 7th national assembly remain the same.

### Articles 4 and 5

#### Derogation of rights (state of emergency)

115. We refer the Committee to our response on the above subject matter on our previous report. However, the President of the Republic of Namibia declared a state of emergency regarding the Coronavirus pandemic, and the National Assembly approved its duration to 17 September 2020.

### Article 6

#### The right to life

116. As stated in the last report (2016), the right to life along with the right to human dignity remain absolute in the country. Despite some calls from certain sectors of the public for the state to reintroduce the death penalty, the Government has no inclinations to do so. Namibia will continue to work with the African Union and the United Nations to lobby for a moratorium on the death penalty with a view of urging retentionists countries to abolish this form of punishment.

117. The Government prohibits extrajudicial killings and the protection of the right to life of all persons is equally guaranteed against private individuals and law enforcement officials. Cases where police officers are accused of using unlawful, arbitrary or excessive force are investigated and prosecuted in the courts. In the cases of *S v Ndamoongelwa*<sup>6</sup> and *S v Shetekela and Others*,<sup>7</sup> the accused police officers were found guilty of Murder with *dolus eventualis* and are serving prison sentences. Cases of female infanticides and honour killings have not been registered by the authorities. The Deputy Minister of Health and Social Services tabled the motion on abortion in 2020, in order to stimulate discussion and advance the dialogues amongst the different stakeholders in order to shape the Namibian narrative on abortion.

<sup>6</sup> CCA43/2017) [2017] NAHCMD 282 (06 October 2017).

<sup>7</sup> (CC 10/2014) [2019] NAHCMD 106 (19 March 2020).

## Article 7

### Prohibition of torture and cruel treatment or punishment

118. As per the previous report (2016), there is no specific law against torture and other cruel, inhuman or degrading treatment or punishment yet. The Government has mechanisms in place to prevent acts of torture by state agents and ordinary citizens. The Namibian Constitution under Article 8 proscribes all forms of torture. Due to the absence of a specific law against torture, individuals who commit this crime or offence are charged with the common law offence of Assault With intent to do Grievous Bodily Harm (AGBH). The Government acknowledges that charging perpetrators of the offence of Torture with AGBH is not sufficient, and therefore the Government has drafted the Torture Bill to address the shortcomings of existing laws.

119. The Anti-Torture bill has adopted the definition of torture and other cruel, inhuman or degrading treatment or punishment as the one provided under the Convention against Torture. In an effort to combat this crime, the President in 2018 deployed members of the Namibian Defence Force to assist the Namibian Police Force in its operations to reduce the high rates of criminal activities in mostly urban areas. Although the rationale behind this law enforcement operation was to root out crime, regrettably, this operation in some cases resulted in injuries and deaths of civilians. Two (2) soldiers were arrested and charged with Murder and are awaiting trial. Moreover, civilians who sustained some injuries as a result of alleged assaults are currently suing the state for compensation.

120. The arrest of the said soldiers and pending lawsuits against the state is an indication that the Government is committed to combating all forms of torture and other cruel inhuman or degrading treatment or punishment. Confessions and admissions made under torture are inadmissible in our court of laws under the Criminal Procedure Act, 1977(Act No. 51 of 1977). The admissibility of confessions should meet the requirements of section 217 and the admissibility of admissions should meet the requirements of section 219A.

121. The Office of the Ombudsman embarked on a Prevention of Torture Project (PTP) and developed a Prevention of Torture Training Manual for Police Officers and resulted in training workshops for police officers.

122. In January 2020, the Legal Assistance Centre (LAC) in conjunction with the Namibian Police Force launched a handbook entitled “*(use of force by law enforcement officers)*” to minimise cases of misunderstanding and or mistrust between the law enforcement members and the public. As previously reported the Office of the Ombudsman continues to visit correctional facilities and police holding cells to inspect the conditions of the facilities and receive complaints from inmates in relation to alleged violations of their rights.

123. The Government has gone a step further in abolishing other forms of cruel punishment such as corporal punishment in both the school and home setting. To this effect, the Basic Education Act, 2020 (No. 3 of 2020) which repealed the Education Act, 2001 (Act No 16 of 2001), prohibits all forms of corporal punishment in any school environment. The Child Care and Protection Act, 2015 (Act No. 3 of 2015) further prohibits corporal punishment in the home setting.

## Article 8

### Slavery and forced labour

124. In order to eliminate forced or compulsory labour, Article 9 of the Namibian Constitution prohibits slavery and forced labour. The Labour Act, 2007 (Act No. 11 of 2007) prohibits forced labour and child labour. Article 15 of the Namibian Constitution prohibits children under the age of sixteen (16) years from being employed or required to perform work.

125. During the period under review, the Government through the Ministry of Labour, Industrial Relations and Employment Creation conducted awareness sessions on labour law provisions including child labour in different vernacular languages through media platforms to ensure that children are not subjected to labour and that citizens are not subjected to forced

labour. During 2015 to 2019, 57 (fifty-seven) labour inspectors across the country have been appointed as part of the Government's mission to combat child labour and the Ministry of Labour, Industrial Relations and Employment Creation, carried out inspections in many sectors of the economy including: agriculture, hospitality, construction, retail, security, fuel and domestic.

126. In addition, the Domestic Workers Wage Order of 2016 prohibits the employment of a child under the age of 18 years as a domestic worker. Namibia ratified the International Labour standards namely Minimum Age Convention, 1973 (No. 138) and worst Form of Child Labour Convention, 1999 (No. 182) to strengthen its legal framework on child labour.

127. Trafficking in persons is defined in section 1 of the Combating of Trafficking in Persons Act, 2018 (Act No. 1 of 2018) the Government promulgated the Combating of Trafficking in Persons Act, 2018 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. The Act provides that a person who is convicted is liable to a fine not exceeding N\$ 1 000 000 (One Million Namibian Dollars), or to imprisonment for a period not exceeding 30 years or both such fine and imprisonment.

128. In the case of *State v Lucas*<sup>8</sup>, the accused was charged with, *inter alia*, five counts of trafficking in persons in contravention of Section 15 read with Section 1 of the Prevention of Organized Crime Act, 2004 (Act No 29 of 2004) (POCA). This was the first case of human trafficking in Namibia, prosecuted in terms of section 15 of POCA before the enactment of Combating of Trafficking in Persons Act, 2018. The accused was sentenced to 13-years imprisonment. During the reporting period 40 cases of trafficking in persons have been reported of which the victims were mostly women and girls. Below is a table that shows trafficking in person's cases ranging from 2014–2019.

Table 14  
**Shows trafficking in persons cases dated 2014–2019**

<i>Reported</i>	<i>Finalized</i>	<i>Under investigation</i>	<i>At court pending trial</i>
40	6		
	Conviction – 2		
	Not guilty – 0		
	PG declined to prosecute – 4	15	19

*Source:* Namibian Police Force, 2019.

129. During 2019, the Ministry of Gender Equality and Child Welfare, in coordination with the National Coordinating Body (NCB) and with the support from the International Organisation for Migration (IOM) launched the National Referral Mechanism and Standard Operating Procedures for the identification, protection, referral and safe return of victims of trafficking (VoTs) in Namibia. The tool was developed to guide stakeholders in enhancing collaborative efforts in the implementation of combating trafficking in persons (TIP) as well as to identify and protect VoTs. An awareness raising campaign was launched to strengthen public vigilance on TIP. The campaign is aimed at sensitising the youth who are more vulnerable to trafficking, to increase the knowledge of the public on TIP, prevent the public from falling prey to trafficker's false promises and to encourage them to report or refer potential cases of TiPs.

130. The Ministry of Home Affairs and Immigration with the support from IOM and UNICEF launched a Police and Prosecutor training manual and pocket manual on TIP. The Training Manual is based on well-established international and regional standards and practices. The training manual will be rolled-out at Police Training Colleges and will help increase knowledge among law enforcement officials on identifying TIP cases, protecting VoTs and prosecuting perpetrators. By formalizing these procedures, the Government has made a commitment to a victim-centered approach to combatting trafficking in persons.

<sup>8</sup> (CC15/2013) [2015] NAHCMD.

Furthermore, the Government has developed an Immigration Standard Operation Procedure Manual, for the training of immigration officials to identify possible victims of trafficking. All immigration officers are capacitated in this regard.

## **Article 9**

### **The right to liberty and security of persons**

131. The right to liberty and security of persons is guaranteed under Article 7 of the Namibian Constitution. All persons who are arrested are informed of the reasons for their arrest in a language that they understand and upon arrest, persons must be brought before a magistrate or judicial officer within 48 hours or as soon as reasonably possible thereafter.

132. As stated in the last report (2016), our courts have ruled on the interpretation of the 48-hour rule and what is meant by “as soon as reasonably possible” and held that it must be determined on the circumstances of each case. The Government has at least 33 magistrate courts country wide and this will enable accused persons to appear before a magistrate or judicial officer within 48 hours or as soon as reasonably possible thereafter. In addition, accused persons may apply to court to be released on bail pending their trial. In the case of *Minister of Safety and Security v Kabotana*<sup>9</sup>, the court stated that article 11(3) is an aspect of the fundamental right to liberty guaranteed by article 7 and that the 48-hour requirement is undoubtedly an important constitutional right accorded to arrested persons which, in the light of our pre-independence history of detention without trial and other related injustices, should be guarded jealously. The Court further stated that the 48-hour requirement must act as a flashing red light in the minds of the officers processing suspects for onward transmission to court. The state was therefore held liable for its failure to have brought the respondent to court within 48 hours, whereas it was reasonably possible to do so in the circumstances of the case.

133. There is one psychiatric hospital in Namibia, located in the capital city Windhoek and three (3) more are to be built in other parts of the country when funds permit. Currently, the Mental Health Act, 1973 (Act No. 18 of 1973) provides measures aimed at preventing abuses to persons held in psychiatric institutions. Moreover, to fully address the shortcomings of the 1973 Mental Health Act, the Ministry of Health and Social Services has developed a Bill on Mental Health which was reviewed by the Cabinet Committee for Legislation it was recommended that consultative stakeholders’ meetings be conducted for inputs.

134. There are procedures in place to adjudicate applications for asylum seekers to obtain refugee status. Asylum seekers and irregular migrants are treated humanely in accordance with the Namibian laws and can only be detained when they violate immigration or any other laws. In instances where such laws are violated, the asylum seekers are procedurally detained and subsequently deported. Before the deportation order is made by the Immigration Control Board, asylum seekers are given an opportunity to appeal the Board’s decision.

## **Article 10**

### **Humane treatment of persons deprived of their liberty**

135. The Government continues to protect and promote the rights and welfare of persons deprived of their liberty. The Correctional Service Act, 2012 (Act No. 9 of 2012) is the governing law pertaining to persons deprived of their liberty. This Act ensures that every inmate is secured in a safe and humane custody, within a correctional facility, until his or her release. The Act further provides for rehabilitation programmes and constructive activities for sentenced offenders that contribute to their rehabilitation and successful re-integration into the community.

136. The Namibian Correctional Service (NCS) has a Health Policy that addresses all the health issues of the inmates including public health problems such as Tuberculosis, HIV/AIDS, Hepatitis and other infectious and contagious diseases. The Policy covers in

<sup>9</sup> 2014(2) NR 305 (SC).

detail the specific concerns of inmates that may not be found in the general public environment. The Policy also covers all aspects of health that are common in the general public health system. In general, the Namibian Correctional Service Health Policy advocates for equal health standards to be offered to the inmates as they would be given to the general public. In other words, health professionals in correctional facilities should be of equal standing to those found in the state hospitals that cater for the public and the services that they should offer to the inmates should be like the one being offered to the general public in every respect and this includes cases of public health concern including HIV/AIDS.

137. The NCS Health Policy also allows inmates who can afford private health care services to access those health care services. Inmates are provided with nutritious foods and special diets for those that suffer from ill health. Children below the age of two living with their mothers are provided with formula milk, disposable nappies as well as baby foods such as cereals, fruits and special diets to the nursing mothers in addition to their daily meals.

138. NCS provides gratuities for offenders as a way of encouraging them to participate in rehabilitation programmes as well as financial assistance to offenders to facilitate their reintegration into society. Six (6) programmes have been implemented of which two (2) are Core Structures Programmes (these are structured interventions offered by NCS aimed at targeting evidence based factors that are directly linked to offenders' criminal behavior, in order to reduce reoffending); three (3) are In-house Support Programmes, these are formalized interventions or activities that are aimed at supporting the outcomes of the Structured Programmes or address offenders' risks and needs; and One (1) is an externally sourced programme, to rehabilitate inmates in prisons.

139. The Children's Advocate plays a pivotal role in relation to children in conflict with the law. The Children's Advocate is mandated in terms of Section 25 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) to receive and investigate children-related complaints from any source including a child.

Table 15

**Shows during 2015 and 2019, a total No. of 116 offenders who obtained higher qualification whilst incarcerated**

<i>Correctional Facilities</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
Windhoek	9	5	7	10	7
Hardap	0	2	3	5	6
E. Shikongo	2	2	3	4	3
E. Nepemba	3	1	2	3	2
Oluno	1	3	4	6	3
Walvis Bay	1	0	1	2	6
Divundu	1	2	3	4	0
<b>Total</b>	<b>17</b>	<b>15</b>	<b>23</b>	<b>34</b>	<b>27</b>

*Source:* Namibian Correctional Service.

## **Article 11**

### **The right to protection from imprisonment due to failure to fulfil contractual obligation**

140. Namibia has no law that compels authorities to imprison individuals who fail to honour their contractual obligations. The recourse available to a prejudiced party is to institute a civil claim against the defaulting party in a court of law. This is applicable in cases of defaulting on the payment of loans and breach of contract.

## **Article 12**

### **The right to freedom of movement**

141. The right to freedom of movement within and outside the borders of Namibia is a constitutionally guaranteed right. The status of immigration related laws has not changed since the last report. However, there have been developments in relation to laws pertaining to freedom of movement of citizens to and from neighbouring countries. In this regard, Parliament passed the One-Stop Border Post Act, 2017 (Act No. 8 of 2017). The purpose of the Act is to provide for the conclusion of agreements with adjoining states on the establishment and implementation of one stop border posts.

142. In addition, the promulgation of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) regulates the movement of minors with their parents/guardians for their protection. Under sections 235 and 236, no person may remove a child from a person who has the lawful control over the child without that person's prior consent. The Immigration Control Act, 1993 (Act No. 7 of 1993) regulates and controls the entry of persons and removal of certain immigrants from Namibia. There is legislation that allows Government in certain circumstances to strip individuals of their citizenship. In this regard, citizens by naturalisation and registration may be deprived of the right to citizenship on account of national security by an order of the Minister responsible for Home Affairs. However, for this to occur, several criteria have to be met in line with relevant laws.

## **Article 13**

### **Deportation of aliens**

143. The status of the laws and mechanisms pertaining to the deportation of aliens has not changed as per our responses in the last report.

## **Article 14**

### **The right to equality before the courts and to a fair and public hearing by an independent court established by law**

144. The position remains the same as reported in the previous report. However, in order to strengthen the independence of the Judiciary and uphold the doctrine of separation of powers, the Office of the Judiciary became an autonomous body in 2015. Previously it fell under the Ministry of Justice. A new law the Judiciary Act, 2015 (Act No. 11 of 2015) was thus promulgated to this effect to establish the Office of the Judiciary. The aim of the Act is to strengthen independence of the Judiciary in line with article 78(5) of the Namibian Constitution; to provide for administrative and financial matters of the Office of the Judiciary; and to regulate matters connected or incidental to enhancing such independence.

145. In an effort to improve the efficiency and accessibility of justice, the judicial case management system (JCM), came into full operation in 2014 along with mediation and electronic filing. All these initiatives continue to be of great value in the early finalization of cases and in reducing litigation costs.

## **Article 15**

### **Non-retroactive laws**

146. The position remains the same as reported in the previous report.

## **Article 16**

### **The right to recognition before the law**

147. The registration of births is done in terms of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963) and is administered under the auspices of the Ministry of Home Affairs and Immigration. Namibia remains committed to the obligation to

ensure that all children are registered immediately after birth as outlined under Article 7 of the Convention on the Rights of the Child.

148. The Ministry of Home Affairs and Immigration has fully digitalized the issuing of birth certificates in order to expedite the process. This forms part of the e-National Population Registration System, which caters for all vital events from birth to death, including ID registration. 82.9% of all Namibians hold an identity card. The Ministry has established offices in all towns and cities, and it is currently developing a new Bill called the Civil Registration and Identification Bill, which will combine the Birth, Death, Marriages Registration Act of 1963 with the National Identification Act of 1996.

### **Article 17**

#### **The right to respect of privacy, family, home and correspondences, and protection of honour and reputation**

149. The Government of the Republic of Namibia respects the rights to privacy as guaranteed under chapter 3 of the Constitution. The state can only interfere with this right, if it is in the interest of national security. However, to do so the relevant authorities must apply to court for permission. Any person whose right to privacy has been unlawfully infringed can seek redress through the courts of law.

### **Article 18**

#### **The right to freedom of thought, conscience and religion**

150. It is estimated that 90% of Namibians follow the Christian faith. Nevertheless, Namibia is a secular state and therefore, there is a complete separation between the state and organized religion. Although the Christian faith is the dominant religion in the country, other minority religions enjoy the same rights and protections as the former. Muslims, Jews, followers of the Baha'i Faith, and followers of indigenous African religions are allowed to practice their religion without any interference or intimidation from the State. Despite the secular nature of the state, Government continues to work with faith-based organizations to combat social ills such as gender- based violence, drug and alcohol abuse, to mention but a few.

151. In public schools, at primary level, the subject Religion and Moral Education is compulsory for all learners irrespective of their religious affiliation. The subject does not endorse a particular religion. Rather it is accommodative and teaches all kinds of religions to learners focusing mainly on their similarities instead of their differences. This approach promotes tolerance amongst learners from different religious backgrounds. The Ministry is offering Religious and Moral Education in state schools as part of the national curriculum taught from Pre-Primary up to Grade 9. Learners are expected to have a clear understanding and respect for the diversity and freedom of beliefs, awareness of the highest moral, ethical and spiritual values, such as integrity, responsibility, equality and reverence for life.

152. Religious institutions are allowed to run their own schools while applying the same curriculum approved by the Government. For example, the Catholic Church runs a number of private religious schools across the country. The Government appreciates the role that religious institution play in delivering health services to citizens. In this regard, the Ministry of Health and Social Services (MoHSS) has a long-standing agreement with the Roman Catholic Church to provide medical services and accommodate state patients in its hospitals.

153. As mentioned above, the Christian faith has the largest following in the country, and the Government recognizes several Christian holidays. Christian holidays such as Easter, Ascension and Christmas day have been declared as public holidays by way of an Act of Parliament, the Public Holidays Act, 1990 (Act No. 26 of 1990). Followers of minority religions such as those mentioned above are also allowed to celebrate and commemorate their religious holidays without any intimidation from the state and the general public.

154. The right to religion was tested in the case of *ES v AC*<sup>10</sup>. The case involved a mother who was medically admitted and needed to receive blood transfusion to save her life but refused the blood transfusion on account of being a Jehovah witness. Her brother applied to court for an order declaring her mentally impaired due to her health condition and appointing him as her curator so that he may consent to medical staff administering blood transfusion on Mrs. ES. The High Court ruled in favour of the applicant. The Supreme Court however overturned the decision of the High Court and held that the interest of the child though very important does not always supersede the rights of the parent to choose what should happen to their bodies. The Court held:

*“The right to choose what can and cannot be done to one’s body, whether one is a parent or not, is an inalienable human right. [...] Moral autonomy is of central importance to the protection of human dignity and liberty in free and open democracies such as ours.”*

155. The judgment in the *ES v AC* case is an indication that the right to practice any religion and to manifest such practice is respected and highly valued by the Government of the Republic of Namibia.

## **Article 19**

### **The right to freedom of expression**

156. Namibia continues to make strides in the protection of the right to freedom of opinion and expression as guaranteed by Article 21 of the Namibian Constitution. In 2019 the World Press Freedom Index ranked Namibia as the highest African country respecting freedom of expression. Namibia has retained its global ranking position of being 23<sup>rd</sup> out of 180 countries, at the World Press Freedom report for 2020. At present Namibia has Nine (9) independent newspapers and One (1) state-owned. Citizens are allowed to air their grievances against the state in the said newspapers without any fear of retribution from the state. Citizens can also air their grievances or make suggestions to government ministries and agencies on the Radio call-in programmes in both state- owned and private owned radio stations on how to effectively deliver services to communities. In some instances, public officials including members of parliament are obliged to give feedback to citizens ‘in relation to the concern raised by callers on this radio – call in programmes.

157. The Head of State, His Excellency, Dr. Hage Geingob has on some occasions participated in these call-in programmes to address some of the concerns raised by the citizens. Furthermore, the Presidency has a specialised office that specifically caters for the media. This office is headed by the Press – Secretary who acts as a liaison between the Head of State and media houses. All social media platforms are easily accessible without restrictions from the state. There are two (2) television stations and Forty-one (41) radio stations in the country. In addition, Namibians are free to access international media through digital satellite television (DSTV).

158. Journalists in Namibia enjoy relative freedom in the execution of their work, free from arrest or arbitrary detention. Namibia highly values media freedom and implements a self-regulated media framework providing structures such as the Media Ombudsman and Namibia Open Forum to deal with complaints against the media.

159. In recent times, there has been cases before the courts where the issue of what constitutes freedom of speech and expression came to the fore. The High Court recently confirmed the importance of press freedom in a democratic society in the case of the Director General Namibia Central Intelligence & Another v *Haufiku: Mathias & Another*.<sup>11</sup> Furthermore, social media platforms are not censored or restricted by the state. Citizens can use social media platforms to engage the government and criticise state policies without retribution.

<sup>10</sup> (CA57/2012) [2015] NASC 11 (24 June 2015).

<sup>11</sup> (SA 33/2018) [2019] NASC 7 (12 April 2019).

160. It is worth noting that the right to freedom of speech and expression is not absolute in terms of Article 22 of the Namibian Constitution. In the case of *Du Toit v Amuphadhi and Others*<sup>12</sup>, the court noted that the right to freedom of speech and expression, which is fundamental to a democratic society, is not a paramount value, and must be construed in context with other constitutional values, in particular the values of human dignity, freedom and equality.

## **Article 20**

### **Prohibition of propaganda for war, national, racial or religious hatred**

161. As per our response in the previous report, the Racial Discrimination Prohibition Act, 1991 (Act No 26 of 1991) as amended in 1998 remains the principal piece of legislation that criminalises all forms of racism in the country. Regrettably, discriminatory apartheid era laws are still in existence in our legal system. However, the State is taking measures to address this challenge. To this effect, Parliament passed the Obsolete Laws Act, 2018 (Act No. 21 of 2018). This Act repeals certain obsolete laws, including certain racial laws.

162. Although Namibia does not have a specific law that strictly deals with propaganda for war, the Government continues to promote national, racial as well as religious harmony amongst its citizens. As stated above in Article 18 of the Covenant, Namibians have the right to practise their religions without any intimidation from the state.

163. In an effort to alleviate instances of racial discrimination, the Government through the Ministry of Education, Arts and Culture (MoEAC) in collaboration with the private sector regularly organise cultural festivals which are aimed at showcasing Namibia's rich and diverse heritage. The holding of these festivals is further aimed at promoting tolerance amongst Namibia's different ethnic and/or racial groups.

164. To further combat acts of racism and discrimination, the Office of the Ombudsman conducted a study on the causes of racism and discrimination in the country. The report entitled "*Report on the national inquiry into racism, racial and other forms of discrimination and tribalism, a nation divided: why do racism and other forms of discrimination still persist after twenty-seven years of Namibian independence?*" was made public and contained findings as well as recommendations to Government and the private sector to implement.

## **Articles 21 and 22**

### **The right to peaceful assembly and association**

165. The right to peaceful assembly as per our response in the previous report is governed by the Public Gathering Proclamation (AG 23 of 1989). Namibians are entitled to assemble peacefully in accordance with the law. However, to be able to exercise this right, especially in cases that involves mass mobilisation of people such as political rallies, labour strikes and citizens protests on various national issues, permission is sought from the Namibian Police Force. The Namibian Police Force is then required by law to ensure that law and order is maintained throughout the said assembly. A few lawful demonstrations, peaceful protest, marches undertaken by the public and escorted by the Namibian Police Force recorded some violence against the unarmed demonstrators.

166. In terms of Article 17 (1) and 21 (1)(e) of the Namibian Constitution all Namibians are free to join and form political parties/movements of their choice. During the last Presidential and National Assembly elections (2019) about 15 political parties and presidential candidates including one independent candidate participated in the said elections. The conduct of the elections was declared free and fair by international observers. However, several presidential candidates challenged the outcome of the presidential vote in the court of law. This challenge was subsequently dismissed.

167. All workers in Namibia are entitled to join a trade union of their choice as this is their constitutional and statutory right. There are currently 41 trade unions registered in the country.

---

<sup>12</sup> (2016/02822) (2019) NAHCMD 216.

In relation to the right to freedom of association the information is the same as provided for in the previous report.

168. The Namibian Constitution guarantees the freedom to form and join political parties of one's choice, however two (2) political movements/organisations (United Democratic Party and the then Caprivi Development Party) have been denied registration on the basis of advocating for secessionism, tribalism and regionalism.

## **Article 23**

### **Protection of the family, the right to marriage and equality of the spouses**

169. As per the previous report, Article 14(1) of the Namibian Constitution provides that men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.

170. Section 226 of the Child Care and Protection Act, 2015, provides that a person may not give a child out in marriage or engagement if such child does not freely consent to the marriage or engagement or is below the minimum age for marriage as contemplated in the Marriage Act as well as the Married Persons Equality Act, 1996. Section 26 of the Marriage Act, 1961 (Act No. 25 of 1961) states that no boy or girl under the age of 18 years shall be capable of contracting a valid marriage except with the written permission of the Minister responsible for Home Affairs; and a person below the age of 21 years requires the consent of his or her parent, parents or guardian in order to marry. The Marriage Act is being reviewed and the age of marriage will be aligned with the CCPA.

171. A person who contravenes the marital age legislation commits an offence and is liable on conviction to a fine not exceeding N\$ 50 000 or imprisonment for a period not exceeding ten years or both such fine and imprisonment. These marital age restrictions serve as a safeguard against early child marriages which may have a detrimental impact on the child's well-being and development.

172. The Ministry of Gender Equality and Child Welfare conducted a formative study on child marriages in Namibia. The purpose of the study was to describe the state of child marriages in Namibia to inform the development of evidence-based policies, legal reform, resource mobilization and programming. The study is still to be finalized. Namibia is in the process of revising and enacting additional laws pertaining to women's rights in marriage.

173. Polygamous marriages are recognised under various customary laws of different traditional communities in the country. Consent is required for women to enter in these kinds of marriages, however, the law prohibits girls under the age of 16 from entering polygamous marriages. Anyone who marries a person under the age of 16 can be charged with the offence of statutory rape. The Veterans Act, 2008 (Act No. 2 of 2008) and the Government pension fund recognise the right of women in polygamous marriages under customary law to inherit from their spouses.

## **Article 24**

### **The rights of the child**

174. Article 15 of the Namibian Constitution provides that children have a right to a name and a nationality. A birth certificate is usually the first step to secure this right. Therefore, every parent has a duty to register the birth of a child as soon as possible following the birth of the child. The Government through the Ministry of Home Affairs and Immigration has an e-birth Notification System in place which allows for timely birth registrations. The system is accessible in all district Hospitals. The national birth registration rate is 87.8 % and 77.6% of children under the age 5 have a birth certificate, according to the Namibia Inter-censal Demographic 2016 Report. There are large regional disparities. //Karas in the south has birth registration rate of 96.2, while the Kavango West region in the northeast has the country

lowest birth registration rate of 67.3%. The birth registration has been fully digitalised and is an integrated part of the e-National Population Registration System, which caters for all vitals events from birth to deaths, including ID registration. 82.9% of all Namibians hold an ID card.

175. The provision of national documents including the issuing of birth certificates is the responsibility of the Ministry of Home Affairs and Immigration. The Ministry has established offices in all towns and cities, as well in 23 hospitals to encourage early birth registration. In the event that the father denies paternity or is unknown, the mother can register the child on her surname, and father's details will be left blank. Section 232 (1) of the CCPA prohibits schools and hospitals from denying services to children on the basis of not being registered. Section 145 (3) (t) of the CCPA instructs any organ of state to assist the child in obtaining access of a public services to which a child is entitled, for example, the Osire Settlement Centre for refugees provides all basic services including birth registration.

## **Article 25**

### **The right to participate in public affairs, voting rights and the right of equal access to public service**

176. Every Namibian citizen has the right to participate in political activity, and it is guaranteed in the Namibian Constitution under Article 17. The Electoral Act, 2014 (Act No. 5 of 2014) provides for the establishment and constitution of the Electoral Commission of Namibia which facilitates the conducting of elections in the country.

177. Since the last report, Namibia has held one Presidential and Parliamentary election and Local and Regional authorities' elections. Two new political parties were registered during the reporting period these are: The Landless People's Movement and the Christian Democratic Voice.

178. A person who is not a Namibian citizen may not be appointed to and may not accept appointment as an elected office-bearer of a political party or an organisation. Section 136 provides for the application for registration as political party and it states that a political party intending to take part in elections in Namibia must, in the prescribed application form and in the prescribed manner, apply to the Commission for registration in accordance with the Act.

179. The mandate of the Electoral Commission of Namibia is to register and educate the citizens who are eligible to vote on their rights and procedures during elections. All communities are targeted for this education, including those living in rural areas and persons with disabilities. Furthermore, the Electoral Commission of Namibia has introduced electoral voting machines to cater for the visually impaired allowing them to cast their vote without assistance maintaining secrecy of the vote. Mobile polling votes are set up across the country during elections to ensure that all eligible voters cast their votes unhindered. Namibia is amongst the few nations in Africa where convicted offenders retain their right to vote and exercise this right in all national elections. The ECN framework has clear guidelines of being inclusive of all diverse groups to take part in the election process. Provision is also made for citizens living in foreign countries to participate in the election process.

## **Article 26**

### **Equality and equal protection before the law**

180. The position remains the same as provided for in the previous report. Any Namibian whose rights has been infringed can approach the Office of the Ombudsman for redress. Some Private and public interest law firms such as the Legal Assistance Centre routinely assist indigent people to institute lawsuits against state organs accused of violating human rights. The University of Namibia also has a legal aid clinic that provides legal assistance to individuals who cannot afford legal fees.

## Article 27

### The rights of minorities

181. The marginalised communities are represented in Parliament, during the 6th National Assembly three (3) members of Parliament were from the marginalised communities. One (1) member was from the ruling party and the other two (2) members from the opposition parties. There is only one (1) female member from the marginalised communities in the National Council. In addition, five members from the marginalised community were appointed as staff members under the Office of the President, in the Division for the marginalised communities and one staff member from the Khwe San community was appointed as one of the assistants to the President.

182. Ministry of Education, Arts and Cultures offers Ju/ 'hoansi, a dialect of the San languages up to Grade 3 level in primary school at Tsumkwe Primary School and Nyae Nyae village schools. Learners are not prohibited from wearing their traditional garments to school. The challenge faced is that sign language is not a recognised national language of the country.

183. The Government of the Republic of Namibia continues to ensure that members of marginalised communities receive adequate nutrition. Many members of marginalised communities are beneficiaries of the government sponsored food bank program. The Food Bank program is a pilot project initiated by government to alleviate hunger and starvation in Namibia, its principal target are the poorest communities in Namibia.

184. The Government in addressing the high levels of inequality and social exclusion has put in place a national policy on inclusive education as a medium to attaining an accessible, equitable and sound education for all especially the educationally marginalised children through efficiency, democracy and solid advocacy for lifelong learning.

185. The Government in 2017 made a commitment to draft the White Paper on Indigenous Peoples. The White Paper guides the Division of the marginalised communities and it constitutes policy guidance for promoting and protecting the rights of the marginalised communities by ensuring their inclusion in a strong, resilient and tolerant Namibian Government. The overall aim of the draft policy (the White Paper) is to strengthen institutional frameworks, improve coordination and ensure effective consultation, participation and representation for San, Ovatie and Ovatjimba communities. The Marginalised communities are the most targeted groups in terms of the land resettlement programme. Land with the size of 2600 ha was provided in the Omaheke Region for the San communities of Otjinene and Epukiro during the 2015/2016 financial year.

Table 16  
Shows the San communities that were resettled in the Omaheke region

<i>San Community</i>	<i>Year of resettlement</i>	<i>How many households</i>	<i>Hectares of land</i>
/Nu/gumu	2014	12 households	35 000 ha
Otjiamapeta	2015	17 households	11 500ha
Otjiuapeuri	2016	16 households	34 000ha

*Source:* Ministry of Land Reform.

186. In an effort to improve the socio-economic conditions of the marginalised communities, the Government has embarked on a number of programmes/or projects to enhance minority rights are outlined below:

(a) In the Kunene Region, three (3) classrooms were constructed at Otjikojo village, Three (3) additional classrooms at (Otjomuru), and two hostels both at Otjikojo/Otjomuru. Two (2) clinics were constructed at Otjomuru and Seringkop. A brickmaking project started at De-Riet village for the construction of a new school, teacher's quarters and a hostel.

(b) In the Otjozondjupa Region, one (1) school was constructed at Dobe village and a community centre with a kindergarten constructed at Namapan village in Tsumkwe.

Nine (9) houses were completed, and a kindergarten was constructed and One Hundred and Thirty-One (131) heads of cattle were provided to the San community at Ondera Ya Urua. Ten (10) houses were constructed for the San community at Ondera Ya Urua village and Two (2) houses built at Namapan village. The Turkish Government through its international agency (TIKA) provided assistance by providing clothes, goats and cattle as well as agricultural implements to San communities in the region. The Namibia Kalahari New Hope Project (NGO) provided food parcels, clothes and funded a garden project to the Tsumkwe San communities between 2018 and 2019.

(c) In the Oshikoto Region, About One Hundred and Twenty (120) households of Hai//Om San people resettled since 2013. The Office of the Prime Minister paid for pivot, a tractor, seeds and fertilizers and implements. The Office also provided a government pick up and a driver to transport produce to the markets. In the Ohangwena Region Twenty-six (26) houses were constructed and electrified for the San community members of Omundaungilo in the Ohangwena region.

(d) In Omaheke region, the Government resettled some members of the San community with the assistance of the Namibian-German Special initiated Program (NGSIP) to drill boreholes and install infrastructure. The community were also provided with cattle with the assistance of NGSIP.

(e) The Government through the Ministry of Environment and Tourism (MET) engaged the Hai//om, a marginalised community in the Etosha National Park, Oshivelo and Outjo district by purchasing land in order to give them access to the Etosha National Park through a tourism concession. Furthermore, the community can access their grave sites inside the Etosha National Park when necessary and upon request.

(f) In 2015 MET assisted with the construction of 37 houses for the Hai//om community and low-cost brick houses for the Hai//om community who relocated from the Etosha National Park. In addition, MET provides employment to Sixty-four (64) members of the Hai//om community in the Etosha National Park. The Ministry has been working with the Hai//om Gabaub Community Association which is their local management body with a representative committee.

187. The Government has made efforts to ensure that marginalised communities are not discriminated against by appointing Development Planners for the purpose of ensuring that all marginalised communities are protected against any discrimination. Coordinators were also appointed from the communities as focal persons. The responsibility of these persons is to mobilize communities to stand up for their rights and to report any kind of discrimination against them and to mobilize themselves to take charge of their development.

---