



# International Covenant on Civil and Political Rights

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## Human Rights Committee

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

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

1. Recalling the Committee's previous recommendations regarding the Office of the Ombudsman,<sup>1</sup> please specify the measures taken: (a) to provide the Office of the Ombudsman with sufficient resources to implement its mandate in full, through a dedicated budget allocation; (b) to allow the Office of the Ombudsman to recruit its own staff; and (c) to ensure the effective implementation of the Ombudsman's recommendations. Please indicate the expected time frame for adoption of the Ombudsman bill.

#### Anti-corruption measures (arts. 2 and 25)

2. Please respond to reports that corruption among government figures and public officials is a significant issue, notably with regard to public procurement and services, and provide statistics on investigations, prosecutions and convictions. Please explain the reasons behind the delayed entry into force of the Whistleblower Protection Act (No. 10 of 2017) and the Witness Protection Act (No. 11 of 2017) and the implications of the delay for the effectiveness of ongoing high-profile corruption investigations.

#### Fight against impunity and past human rights violations (arts. 2, 6, 7 and 14)

3. In the light of the Committee's previous observations on enforced disappearances<sup>2</sup> and torture and ill-treatment,<sup>3</sup> and of information provided by the State party in its third periodic report,<sup>4</sup> please provide further information on the steps taken to ensure the establishment of the truth and of accountability with regard to: (a) the torture and enforced disappearance of members of the South West Africa People's Organization, many of them soldiers, accused of disloyalty during the independence struggle; and (b) enforced disappearances, torture and violations of fundamental legal safeguards in regard to suspected participants in the secession attempt in the former Caprivi Region, now the Zambezi Region. Please include detailed information on the investigations undertaken, the sanctions handed down to perpetrators and the reparations provided to victims and their families. In regard to violations committed in the context of the independence struggle, please explain how the granting of amnesty in relation to the serious human rights violations committed is compatible with the provisions of the Covenant.

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\* Adopted by the Committee at its 137th session (27 February–24 March 2023).

<sup>1</sup> [CCPR/C/NAM/CO/2](#), para. 7.

<sup>2</sup> *Ibid.*, paras. 19 and 20.

<sup>3</sup> *Ibid.*, paras. 21 and 22.

<sup>4</sup> [CCPR/C/NAM/3](#), paras. 44 and 45.



**Non-discrimination (arts. 2, 3 and 26)**

4. Please indicate when the bill on combating discrimination, discriminatory harassment and hate speech, submitted to the Government by the Office of the Ombudsman in September 2021, will be adopted, and clarify whether discrimination on the grounds of sexual orientation, gender identity, age, marital status and disability will be explicitly prohibited in it. Please report on measures taken or envisaged to address discrimination faced by people with disabilities, including persons with albinism, in accessing health care, education, employment, information, transportation and the justice system and in participating in political life, and on measures to ensure the inclusion of people with disabilities in policy-making processes. Please provide information on measures taken or envisaged to address discrimination and marginalization faced by Indigenous Peoples, in particular members of the San community. Please include information on the white paper on Indigenous Peoples developed by the Office of the Ombudsman and submitted to the Attorney General in 2019, including the time frame for its adoption.

5. With reference to the previous concluding observations,<sup>5</sup> please provide information on steps taken to combat and prevent discrimination, harassment and violence against lesbian, gay, bisexual, transgender and intersex persons, including in the workplace and health-care settings and in interactions with the police and judicial system. In the light of the Committee's previous recommendations regarding legislation that is discriminatory in regard to lesbian, gay, bisexual, transgender and intersex persons,<sup>6</sup> please indicate whether there is any intention to amend the Labour Act (No. 11 of 2007) to specifically prohibit discrimination on the ground of sexual orientation, to repeal the common law crime of sodomy and to include the protection of persons living in same-sex relationships in the Combating of Domestic Violence Act (No. 4 of 2003).

**Gender equality (arts. 3 and 26)**

6. In reference to the Committee's previous recommendations<sup>7</sup> and the recommendations recently made by the Committee on the Elimination of Discrimination against Women,<sup>8</sup> please provide details of measures taken to address discrimination against women, in particular under the customary law system. Please provide information on measures taken to address discrimination faced by women married under customary law, including in regard to land ownership and inheritance. Please report on progress in increasing the registration of customary law marriages, and provide information on the adoption of the bill on the recognition of customary marriage, including with regard to provisions within the bill that address polygamy. Please confirm the time frame for the adoption of the intestate succession bill, the uniform matrimonial property bill and the divorce bill, and provide information on how those bills, once enacted, will address discrimination faced by women in the State party.

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

7. In reference to the Committee's previous concluding observations<sup>9</sup> and the concluding observations recently adopted by the Committee on the Elimination of Discrimination against Women,<sup>10</sup> please provide information on the implementation of the national plan of action on gender-based violence (2019–2023), including information on progress achieved in reducing the prevalence of gender-based violence in the State party. Please provide information on prosecution rates for domestic violence and on measures taken to ensure access to justice for victims of all forms of gender-based violence, including access to compensation. Please provide information on the expansion and operationalization of shelter facility provision for domestic violence victims and on victims' access to psychosocial counselling.

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<sup>5</sup> CCPR/C/NAM/CO/2, para. 9.

<sup>6</sup> Ibid., paras. 9 and 10.

<sup>7</sup> Ibid., paras. 12 and 18.

<sup>8</sup> CEDAW/C/NAM/CO/6, paras. 14 and 16, in particular.

<sup>9</sup> CCPR/C/NAM/CO/2, paras. 23 and 24.

<sup>10</sup> CEDAW/C/NAM/CO/6, paras. 27 and 28.

**Voluntary termination of pregnancy and access to sexual and reproductive rights (arts. 6, 7 and 8)**

8. In reference to the Committee's previous recommendations<sup>11</sup> and the recommendations recently made by the Committee on the Elimination of Discrimination against Women,<sup>12</sup> please provide details of measures taken or envisaged to ensure effective access to legal abortion under the Abortion and Sterilization Act (No. 2 of 1975), as amended through Act No. 48 of 1982, including the removal of unwarranted administrative requirements. Please provide information on measures taken to establish alternative care systems for newborn children deprived of family care and on measures to combat the stigmatization of women and girls who seek abortions. Please provide information on measures to increase awareness of and ensure effective access to appropriate sexual and reproductive health education and services, including contraception, particularly for people living in rural and remote areas, persons with disabilities, and lesbian, gay, bisexual, transgender and intersex people. Please comment on whether section 4 of the Abortion and Sterilization Act allows for the possibility of forced sterilization of persons with disabilities without prior and informed consent.

**Right to life and excessive use of force (art. 6)**

9. Please provide information regarding the legal standard applied in the State party for appropriate use of force and firearms by law enforcement officials and the source of that standard in domestic law. In that regard, please explain how the provisions of the Criminal Procedure Act (No. 51 of 1977, sect. 49) and the Public Gatherings Proclamation (1989, sect. 6) are in line with the Covenant, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020). Please provide information on instances of the excessive use of force by police and security forces during the reporting period, including information on unlawful or arbitrary killings, such as those reported by the State party in the context of a joint law enforcement operation in 2018 that was carried out by the Namibian Defence Force and the Namibian Police Force to address high crime rates in urban areas.<sup>13</sup> Please include details of complaints received, investigations undertaken, sanctions handed down to perpetrators and compensation provided to victims and their families. Please provide information on training provided to law enforcement officials on the appropriate use of force and firearms in conformity with relevant international standards and guidelines, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.

**Right to life, environmental degradation and climate change (art. 6)**

10. In view of the Committee's general comment No. 36 (2018) on the right to life (para. 62), please provide information about efforts to prevent and mitigate the effects of climate change and environmental degradation in Namibia. Please include information on the implications of planned oil and gas extraction for local rural populations, in particular for marginalized Indigenous communities, including both direct and indirect impacts on their livelihoods and living environment.

**Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (art. 7)**

11. Please comment on the reported recurrence of ill-treatment by members of the police and security forces, and provide disaggregated information on complaints of torture and ill-treatment filed against the Namibian Police Force, Namibian Defence Force and Namibian Correctional Service during the reporting period, including details of investigations undertaken, sanctions handed down and redress provided to victims. Please update the Committee on the delayed adoption of the bill on the prevention and combating of torture.

<sup>11</sup> CCPR/C/NAM/CO/2, para. 16.

<sup>12</sup> CEDAW/C/NAM/CO/6, paras. 38 and 42.

<sup>13</sup> CCPR/C/NAM/3, paras. 119 and 120.

Pursuant to the Committee's previous concerns and recommendations,<sup>14</sup> please respond to reports that members of the police regularly detain sex workers and coerce them into having sex with them before release, and provide details of any measures taken to ensure that sex workers can report crimes without the risk of prosecution for their occupation. In the light of the Committee's previous recommendation,<sup>15</sup> and the information provided in the State party's report,<sup>16</sup> please indicate if any measures are planned to ensure the independence of the Internal Investigation Directorate of the police or to establish an independent entity for the investigation of complaints against law enforcement officials. Please provide information on training provided to law enforcement officials on the prohibition of torture and other cruel, inhuman and degrading treatment or punishment.

**Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8 and 26)**

12. Please report on the implementation of the Combating of Trafficking in Persons Act (No. 1 of 2018), including disaggregated statistics on the number of cases reported, investigations and convictions, as well as information on measures taken to strengthen the identification of victims, particularly at the borders, and to enhance the provision of rehabilitation assistance to victims. Recalling the recommendation of the Committee on the Elimination of Discrimination against Women,<sup>17</sup> please provide information on efforts to address commercial sexual exploitation of women and girls, including measures to ensure access to exit programmes for those who wish to leave prostitution, and measures to strengthen data collection on prostitution in the State party. Please provide information on efforts to address forced child labour, including measures to strengthen the labour inspection regime, in particular with regard to labour on private farms and domestic work in private households.

**Liberty and security of the person (art. 9)**

13. In the light of the Committee's general comment No. 35 (2014) on liberty and security of person, please indicate measures that have been taken to address the incidence of excessively long pretrial detention, including measures to facilitate access to bail and ensure access to regular judicial review of detention. Please provide updated statistics on pretrial detention, including the total number of persons detained, the average duration of detention and the proportion of the total prison population in pretrial detention.

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

14. Please provide detailed information on measures to improve conditions and address overcrowding in places of deprivation of liberty, particularly police holding cells and places of pretrial detention. Please provide information on: (a) the use of non-custodial sentences, including community service orders; and (b) the construction of new detention facilities and the renovation of existing facilities mentioned in the State party's report. Please indicate measures taken to improve food provision, sanitation and medical assistance in pretrial holding cells. Please report on measures taken to prevent the detention of pretrial detainees with convicted detainees and to ensure that juveniles are not detained with adults, particularly in rural areas.

**Treatment of aliens, including migrants, refugees and asylum-seekers (arts. 7, 9, 12, and 13)**

15. Please provide statistical information on immigration detention for each year of the reporting period, including the number of persons detained, the average duration of detention and the number of deportations, and report on the measures in place to ensure that the use of immigration detention is in line with international standards, with reference to the Committee's general comment No. 35 (2014), including measures relating to access to the asylum procedure. Please provide statistics on asylum for each year of the reporting period,

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<sup>14</sup> CCPR/C/NAM/CO/2, paras. 21 (b) and 22 (c).

<sup>15</sup> Ibid., para. 22 (b).

<sup>16</sup> CCPR/C/NAM/3, para. 45.

<sup>17</sup> CEDAW/C/NAM/CO/6, paras. 29 and 30.

including the number of applications and appeals received, rejected and approved. Please indicate any measures taken or envisaged to facilitate access to the labour market for asylum-seekers and refugees, notably those at the Osire refugee settlement, including with regard to current freedom of movement restrictions.

#### **Access to justice, independence of the judiciary, and fair trial (arts. 2 and 14)**

16. With reference to the Committee's previous recommendation<sup>18</sup> and the information provided in the State party's report,<sup>19</sup> please update the Committee on measures taken to improve access to and funding of the legal aid scheme, including with regard to increasing the income threshold, which at its present low level prevents many Namibians on modest incomes from accessing legal aid. Please update the Committee on efforts towards increasing the availability of legal aid counsel in rural areas, and comment on reports that indigent defendants are sometimes not provided with free legal counsel despite their legal entitlement to it. Please provide information on the monitoring of community courts under the customary law system and on measures to ensure effective access to the appeal process for decisions by community courts, including access to legal assistance for that purpose.

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

17. Recalling the Committee's previous recommendations,<sup>20</sup> please provide information on measures taken to ensure that the right to privacy is fully respected and protected, including with regard to the data protection bill and the cybercrime bill. Please update the Committee on the implementation of part 6 of the Communications Act (No. 8 of 2009), which provides for the establishment of interception centres. In reference to information provided in the State party's report,<sup>21</sup> please provide details of judicial authorizations granted for surveillance of private communications under the Namibia Central Intelligence Service Act (No. 10 of 1997), as well as information on any complaints received in regard to interceptions authorized under sections 24 (2) and 25 of the Act, including the outcomes of any such complaints.

#### **Freedom of expression and right of peaceful assembly (arts. 19, 20 and 21)**

18. In the light of the Committee's previous recommendation,<sup>22</sup> please indicate measures taken or envisaged to amend the provisions of the Research, Science and Technology Act (No. 23 of 2004), according to which research projects, defined in particularly broad terms, are subject to prior authorization and a cumbersome and costly application procedure. Please comment on reports that the national public broadcasting organization, the Namibian Broadcasting Corporation, and the Communications Regulatory Authority of Namibia, which is responsible for regulating the issuance of broadcasting and communications licences, are subject to political interference that undermines their independence, owing, in part, to the appointment of their respective boards directly by the Minister of Information and Broadcasting. Please indicate the time frame for adoption of the access to information bill, which the State party mentions in its report, and provide details on how it will enhance public access to information held by State institutions.

19. With reference to the Committee's general comment No. 37 (2020) on the right of peaceful assembly (paras. 70–73), please comment on whether provisions in the Public Gatherings Proclamation, including those providing for criminal sanctions against organizers of public gatherings for failure to observe notification requirements, constitute a de facto authorization regime. Please provide information on any requests for authorization of public gatherings that have been denied during the reporting period, including detailed information on the grounds for refusal, and information on any criminal sanctions handed down as a result of organizing or participating in public gatherings. With reference to the State party's report,<sup>23</sup>

<sup>18</sup> CCPR/C/NAM/CO/2, para. 32.

<sup>19</sup> CCPR/C/NAM/3, paras. 76–79.

<sup>20</sup> CCPR/C/NAM/CO/2, para. 38.

<sup>21</sup> CCPR/C/NAM/3, para. 91.

<sup>22</sup> CCPR/C/NAM/CO/2, para. 42.

<sup>23</sup> CCPR/C/NAM/3, para. 165.

please provide more detailed information on incidents in which there was a disproportionate use of force by law enforcement officials to disperse peaceful assemblies during the reporting period, such as the protest against gender-based violence in Windhoek in October 2020 and the protest against the seizure of counterfeit goods in Windhoek in May 2022. With reference to the Committee's general comment No. 37 (2020) on the right of peaceful assembly, please provide information on training provided to police and security forces with regard to the relevant international standards for the appropriate management and policing of assemblies, including specific training on non-violent means of crowd control.

#### **Rights of the child (arts. 23, 24 and 26)**

20. Please update the Committee on measures taken to increase birth registration rates in rural areas, particularly in the San community. Please update the Committee on progress achieved in addressing child abuse, including sexual abuse, which reportedly remains prevalent in the State party. In the light of the recommendations made by the Committee on the Elimination of Discrimination against Women,<sup>24</sup> please update the Committee on measures taken to address the persistence of child marriage under the customary law system. Please provide information on the content and status of the child justice bill.

#### **Participation in public affairs (arts. 25 and 26)**

21. Please provide information on measures taken to increase the representation of the San community and other Indigenous communities in such governance structures as the Parliament, the National Council and local government authorities, and to ensure their effective participation in the development of policies and in decision-making processes. Please provide information on the current level of representation of such groups within those structures. Please respond to allegations that the Rehoboth Basters and Zambezians have not been involved in the development of the white paper on Indigenous Peoples.

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

22. Please provide information on the existing legislative requirements for consultation with Indigenous communities in the context of development and conservation projects, and on any relevant provisions of the white paper on Indigenous Peoples. Please respond to allegations that Indigenous communities have not been adequately consulted in the design and implementation of such projects. In that regard, please provide information on measures taken to obtain the free, prior and informed consent of Indigenous communities affected by the exploration and extraction of oil and gas in the Kavango East and Kavango West Regions, and explain: (a) why full social and environmental impact assessments for the Okavango project have reportedly not been undertaken; and (b) why drilling has reportedly been carried out without the requisite permits. Please provide information on measures undertaken or envisaged by the State party to ensure that the project, if it goes ahead, will not have a negative impact on the livelihoods and living environments of Indigenous communities.

23. In view of the fundamental importance of land for the right of Indigenous Peoples to enjoy their culture, please report on efforts to improve access to land and land rights for Indigenous Peoples in Namibia, in particular the San community. Please report on progress in taking account of ancestral land ties within resettlement criteria and in developing enforcement mechanisms for preventing and reversing fencing in communal areas, within the framework of implementing the objectives on agricultural land reform and resettlement contained in the National Human Rights Action Plan (2015–2019).

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<sup>24</sup> CEDAW/C/NAM/CO/6, paras. 25 and 26.