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Consideration of reports submitted by States parties
under article 40 of the Covenant

Replies of Namibia to the list of issues in relation to its third periodic report*

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* The present document is being issued without formal editing.



Constitutional and legal framework within which the Covenant is implemented (art. 2)**Reply to paragraph 1 of the list of issues (CCPR/C/NAM/Q/3)**

1. The Ombudsman has been allocated 21 807 000 Namibia Dollars for the 2023/2024 financial to ensure the execution of its mandate. The Office of the Ombudsman has been capacitated to decentralise into five regional offices in Keetmanshoop, Swakopmund, Oshakati, Rundu and Otjiwarongo in order to bring services closer to the people. Additionally, the staff of the Office of the Ombudsman receives resources to conduct regular visits to other parts of the country.

2. For the past 33 years, the office of the Ombudsman has been operating as an independent institution with its budget and procurements administered by the Ministry of Justice. Government resolved to enhance the independence of the Ombudsman in line with Article 89 of the Namibian Constitution and the Paris Principles on National Human Rights Institutions. The Ombudsman Bill will principally de-link the Office of the Ombudsman from the Ministry of Justice and have its own Executive Director as its accounting officer and administrator who will also be responsible for the recruitment of staff under the Public Service Act, 1995. The Ombudsman Bill has been finalised and is on the list of Bills to be tabled by the Minister of Justice in 2024.

Anti-corruption measures (arts. 2 and 25)**Reply to paragraph 2 of the list of issues**

4. Namibia experiences challenges relating to corruption involving government figures and public officials and resolved to reform the public procurement legislative framework by enacting the Public Procurement Act, 2015 (Act No. 15 of 2015). The Public Procurement Act, 2015 to prevent occurrences of corruption and fraud in the public procurement processes.

5. Namibia remains committed to fighting corruption through various institutions including the Anti-Corruption Commission which has referred 730 case dockets to the Prosecutor-General since 2006. The Prosecutor-General decided to prosecute 553 cases of which 311 have been finalised with 184 convictions and 127 acquittals, 74 are pending decision to prosecute, 242 are pending before the courts, 5 have been referred to the Namibian Police and 98 have been declined for prosecution for various reasons.

6. The Witness Protection Act, 2017 (Act. No. 11 of 2017) commencement notice was published in the Government Gazette of 31 August 2023, in terms of which the Act was operationalised as of 01 September 2023. The commencement of the Act requires a Witness Protection Unit to carry out and ensure the full implementation of the mandate contemplated on, in the Act. The Witness Protection Unit is responsible for formulating regulations, policies, agreements, and operational activities. The Unit provides the legal framework for the procedures to be followed for protection measures to witnesses and related persons who face potential risk or intimidation due to them being witnesses or related persons. The Minister of Justice has appointed the Acting-Director of the Witness Protection Unit, effective 01 September 2023 until 31 March 2024. The Whistleblower Protection Act, 2017 (Act No. 10 of 2017) is not yet operational due to policy, infrastructural and budgetary considerations that remain unresolved. This will not negatively affect the ongoing investigations as those who are witnesses in these matters can be protected under the Witness Protection legislative framework.

Fight against impunity and past human rights violations (arts. 2, 6, 7 and 14)**Reply to paragraph 3 of the list of issues**

7. Namibia has been requested to respond to allegations of enforced disappearances by the Working Group on Enforced Disappearances in the past and the Namibian Police

conducted investigations on these cases. Investigations found that the two individuals alleged to have gone missing are both Namibian citizens of Angolan descent suspected to have gone to Angola. These two cases are therefore considered to be finalised.

8. In emanating from a bitter and protracted liberation struggle where violations of human rights were perpetrated against Namibians by the colonial and apartheid administrations and at independence, the Government had the responsibility to unite the warring factions from the liberation movement and the colonial and apartheid administrations, particularly combatants on both sides. The ruling party deliberately decided not to prosecute any of the parties involved in human rights violations during the struggle for independence and resolved to adopt a policy of national reconciliation in order to unite all Namibians and bring about peace and stability.

9. The Caprivi treason trial was concluded during the year 2016. Some accused persons were found guilty and sentenced. Thirty (30) were found guilty and sentenced to various terms of imprisonment, while seventy-nine (79) were acquitted. Some of those who were acquitted successfully sued the state for malicious prosecution and were compensated accordingly.

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

Reply to paragraph 4 of the list of issues

The Namibian Constitution is the supreme law and provides for the entrenched rights to non-discrimination and equality for all under Article 10. The specific constitutional provisions on dignity and equality under Articles 8, 10, and 23, are supplemented by legislation such as the Racial Discrimination Prohibition Act, 1991 (Act No. 26 of 1991).

Hate Speech Bill

10. Consultations on the draft hate speech bill are underway. The new combating of Discrimination, Discriminatory Harassment and Hate Speech Bill lists grounds for non-discrimination and is now with the Law Reform and Development Commission for further research and for the purpose of holding public consultations on the Bill. Given that the Bill has not been finalised, it would be premature to inform the Committee on its specific provisions. The intention is however to combat discrimination and reform the existing legislative framework which is limited to racial discrimination.

Persons with Disabilities

11. As reported in Namibia's Periodic Report on the UN Convention on the Rights of Persons with Disabilities, Article 10 of the Namibian Constitution provides for the equality of all persons before the law and that no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social economic status. The Namibian Constitution protects the rights of "all members of the human family," which hence prohibits discrimination against persons with disabilities. The laws of Namibia prohibit discrimination against persons in employment, health care, education, and the provision of other public 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 persisted.

12. Persons with disabilities can file complaints of human rights violations with the Office of the Ombudsman which can approach a competent court on behalf of complainants. The Ombudsman is also empowered to carry out public hearing (enquiries) on human rights issues, in 2019, the Ombudsman conducted public hearings on discrimination, stigmatisation and challenges faced by persons with albinism across four (4) regions. The National Disability Council may also represent any person with a disability before any organ of the state, provide or procure legal assistance for any persons with disabilities, if the matter in question relates

to the rights of, or the integration of persons with disabilities in society as provided under section 4(1) (c) of the National Disability Council Act, 2004. Finally, persons with disabilities may approach a competent court to seek redress in terms of Article 25(4) of the Namibian Constitution.

Indigenous Peoples and White Paper

13. The Namibian government established the Division of Marginalised Communities in the Ministry of Gender Equality, Poverty Eradication, and Social Welfare (MGEPESW) to ensure coordination and integration of marginalized communities into our national development framework. To this end, youth from the marginalized communities are nominated and appointed onto bodies of leadership, particularly on the Board of the National Youth Council, to ensure meaningful participation of youth from marginalized communities and indigenous minorities.

14. Consultation is a crucial element in the involvement of the marginalised communities in developing projects, policies and legislation that affects 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. In addition, Article 102(5) of the Namibian Constitution provides for a Council of Traditional Leaders to advise the President on the control and utilisation of communal land and any other matter referred to it by the President. The Council serves as another forum to advance the interests of the marginalised communities. Traditional leaders are often consulted and invited to participate in the development of national and regional policies and programmes.

15. The White Paper on indigenous peoples' rights in Namibia has been finalized with input from stakeholders, under the leadership of the Office of the Ombudsman and is due for Cabinet approval. The government recognises marginalised communities and there are specialised programmes designed to support them.

16. The Government through the Ministry of Gender Equality, Poverty Eradication, and Social Welfare (MGEPESW) conducted a Situational Analysis on the Livelihood of Indigenous Minorities in Namibia during the first and second quarter of 2022. The situational analysis was necessitated by the Cabinet Committee on Land and Social Issues (CCLSI) in its discussion of the draft White Paper on the Rights of Indigenous Minorities in Namibia. The CCLSI further directed that MGEPESW consults all different stakeholders who have been affected by the recommendations of the Situational Analysis Report. MGEPESW scheduled a two day working consultative workshop with all affected stakeholders on 22-23 June 2023 to discuss the recommendations of the Situational Analysis Report. Thereafter, the Situational Analysis Report and Draft White Paper will be presented by the CCLSI, Cabinet and Parliament for deliberations as well as the commencement of the drafting of legislation.

Reply to paragraph 5 of the list of issues

17. All persons, without discrimination, can register cases and complaints to the relevant authorities should they be subjected to discrimination, harassment and violence, including in the workplace and health-care settings and in interactions with the police and judicial system. Provisions under the Namibian legislative framework to combat discrimination, harassment and violence ensure equality of all before the law, including Articles 6, 8, 9, 10 and 21 of the Namibian Constitution, the Criminal Procedure Act, 1977; Labour Act, 2007; Combating of Rape Act, 2000; Education Act, 2001 amongst others. Cases of violence or harassment against members of the LGBTQ community have been registered and adjudicated in the past such as the case of Cloete v Minister of Safety and Security¹ where a transgender woman allegedly assaulted/harassed by Police and granted damages in the amount of N\$50 000.

18. Sodomy remains a common law offence in Namibia however, no person has ever been prosecuted for sodomy. Currently, a case has been registered in the High Court of Namibia against Government challenging the compatibility of the common law offence sodomy and

¹ Cloete v Minister of Safety and Security (HC-MD-CIV-ACT-DEL 404 of 2018) [2021] NAHCMD 523 (12 November 2021) - NamibLII.

unnatural sexual offences.² Discrimination against all persons in Namibia is dealt with in accordance with the relevant provisions of the Labour Act and the Namibian Constitution. Article 10 of the Namibian Constitution serves as the principal provision on the grounds of discrimination and the Supreme Court of Namibia has interpreted the word ‘sex’ as a ground for discrimination under Article 10 to exclude ‘sexual orientation’.³ Therefore, although the Labour Act, 2007 is currently under review, it is unlikely that it would include a ground of discrimination which is inconsistent with the Namibian Constitution as the supreme law of the country.

Gender equality (arts. 3 and 26)

Reply to paragraph 6 of the list of issues

19. Namibia has progressive domestic legislation in place that addresses and combats discrimination against women and regulates customary marriages, inheritance, and land ownership.

20. The Namibian Constitution which is the Supreme Law of Namibia and to which all other laws enacted conforms to. It provides for the right to equality and freedom from discrimination under Article 10 of the Namibian Constitution. The Married Persons Equality Act, 1996 (Act No. 1 of 1996) was enacted after independence to abolish marital power and allow women the freedom to contract and deal with their own affairs in the absence of their husbands.

21. The Traditional Authorities Act, 2000⁴ promotes gender equality in the appointment of traditional leaders.⁵ In terms of the Community Courts Act, 2003,⁶ women are appointed as justices and assessors to hear and make determinations on cases in Community Courts.

22. Article 66 of the Namibian Constitution provides that customary law and the common law in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.

Land ownership and Inheritance

23. The Communal Land Reform Act, 2002,⁷ defines spouse as including the spouse or partner in a customary union, whether such customary union has been registered or not, and “marriage” shall be construed accordingly. As per Section 26 of the Communal Land Reform Act, 2002⁸ subject to section 27, and unless the right is relinquished by the holder thereof, a customary land right allocated under this Act endures for the natural life of the person to whom it is allocated and, upon the death of the holder of a right referred to in subsection (1) such right reverts to the Chief or Traditional Authority for re-allocation forthwith.

Intestate Succession

24. The Intestate Succession Ordinance of 1946 (No. 12 of 1946) makes provisions for the division of estates of persons who died wholly or in partly intestate and makes specific provision for the estate to be inherited by surviving spouses and children.

25. The Ministry of Gender Equality, Poverty Eradication, and Social Welfare in collaboration with other Stakeholders and Partners continuously holds engagements and workshops to sensitize Traditional Leaders on the meaning and implementation of domestic legislation that addresses and Combats discrimination against women and regulates customary marriages, inheritance, and land ownership.

² Dausab v Minister of Justice and Others Case No. HC-MD-CIV-MOT-GEN-2022/00279.

³ Chairperson of the Immigration Selection Board v Frank and Another (SA 8 of 1999) [2001] NASC 1 (5 March 2001).

⁴ Section 3 (1) (g).

⁵ Section 3 (1) of the Traditional Authorities Act, 2000 (Act No. 25 of 2000).

⁶ Community Courts Act, No.9 of 2003 Section 7 and 8.

⁷ No. 5 of 2002.

⁸ Supra.

26. Women have a right to own and to inherit land in accordance with the Communal Land Reform Act, 2002⁹ and the Agricultural (Commercial) Land Reform Act, 1995. These laws make provision for application and recognition of customary law in Namibia.

27. Customary Marriages are recognised and upheld in Namibia. Communities that practice customary law and marry in terms thereof, can register such marriages and can obtain customary marriage certificates from the relevant traditional authority. On the issue of polygamy, Namibia has not decided to abolish polygamy as polygamy remains an integral part of African culture and is not considered to be a harmful cultural practice. Overall, women in polygamous relationships are in it voluntarily and such unions are governed according to the customs and practices of a particular ethnic group. However, the Government is consulting with traditional authorities and other stakeholders on reviewing existing customary marital laws and on enacting specific laws meant to increase protection for women in polygamous unions.

28. The Uniform Matrimonial Property Bill is intended to provide a uniform matrimonial property regime for all civil marriages, to allow a determination and change of property regimes applicable to certain civil marriages contracted in terms of the Native Administration Proclamation, 1928 (Proclamation No.15 of 1928). The Bill is also intended to repeal the Native Administration Proclamation, 1928 and the applicable provisions which are discriminatory based on geographical and racial grounds.

29. The Divorce Bill has been finalised and appears on the list of bills which the Minister of Justice will table in 2024. The Bill removes the common-law fault-based system as a ground for divorce and makes it easier for spouses to divorce particularly on legal costs.

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

Reply to paragraph 7 of the list of issues

30. The National Plan of Action on Gender-Based Violence (GBV) 2019–2023 is a five-year plan which is based on a socio-ecological model. The Plan of Action comprises of four Action Areas which supports a long-term movement that targets root causes or short-term goals that will improve response systems and community safety in general, to ensure that survivors and victims' no longer feel unsafe or untrusting of protection structures. This Plan seeks to put survivors first by making sure that the services they receive are empathetic and correct. The Plan also stimulates a culture of care and Gender-Based Violence watch amongst family's communities, and institutions and promotes early help-seeking to prevent or limit harm.

- Statistics on gender-based violence cases for the period: 2019–2023.

2019	2020	2021	2022	2023
1 774	2 702	3 038	4 277	3 397

Source: Namibian Police Force.

Progress made to reduce gender-based violence cases

- The table above provides statistics on the GBV cases reported at police stations and at GBV units throughout the country.
- The increase (2019–2022) and decrease (3397) of reports about GBV may be attributed to awareness campaigns and crime combating operations conducted within the country throughout the years. The tabulated data further demonstrates the numbers of GBV cases that resulted in criminal charges being opened and pursued in court, the numbers of convictions and arrests.

31. The National Plan of Action on GBV puts survivors first and stimulates a culture of care amongst families, communities and institutions which promotes early help-seeking

⁹ Supra.

behaviours. The Ministry of Gender Equality, Poverty Eradication, and Social Welfare in Collaboration with other Stakeholders and Partners create awareness on GBV through campaigns on GBV prevention and response. Gender Liaison Officers in all fourteen regions also address GBV at regional level and sanitize community members daily on GBV and how to respond to it. Coordination of GBV interventions is done through national and regional GBV clusters.

32. The Combating of Domestic Violence Act, 2003 and the Combating of Rape Act, 2000 were amended (Combating of Domestic Violence Amendment Act,¹⁰ and the Combating of Rape Amendment Act¹¹) to strengthen and provide clarity to the provisions of the amended Acts.

33. Summary of Annual Gender Based Violence Statistics for the period 1 April 2021 to 31 March 2022 prosecuted.

Total Cases on the Court Roll	1 597
Total cases Finalized	521

Source: Prosecutor-General's Office.

- The Republic of Namibia in its efforts to protect survivors and victims of GBV when they testify during criminal proceedings involving allegations of all forms of GBV, the Minister of Justice and the Chief Justice of the Supreme Court of the Republic of Namibia officially opened the renovated victim friendly court for GBV at the Magistrates Court in Katutura, Windhoek, during the year 2022. The victim friendly courtroom facility at Katutura Magistrate's Court is an example of institutional mechanisms designed to protect victims. It was designed specifically to ease the burden for victims testifying in court, as victims are separated from the accused persons to enable them to freely and openly testify without intimidation and without causing unnecessary trauma.
- To ensure access to justice by victims of gender-based violence, members of the Gender Based Violence Protection Division conduct awareness campaigns and operations in collaboration with other stakeholders, educating the public on GBV, rights of victims and survivors, the consequences of GBV and the available legal remedies helping to empower victims to come forth and report crimes. Information is shared with the public through media outlets as well community affairs offices.

34. To provide effective comprehensive services to victims of sexual and GBV, the Government, established 17 Gender Based Violence Protection Units (GBVPU), in 14 regions of Namibia. These GBVPU adopt a multi sectoral approach that involves key ministries. Counselling is accessible for victims and survivors.

35. The Combating of Domestic Violence Act, 2003¹² makes provision for complainants to apply for protection orders in cases of violence, harassment and threats of violence. A protection order may be sought at the same time when criminal charges are laid.

36. The Government has procured eight (8) shelters in seven (7) regions of the country, to provide safe accommodation for victims and survivors of GBV and violence against children and trafficking. Shelters are an essential aspect of protection and safety to help survivors regain their self-esteem and dignity. There are two (2) private shelters for victims of GBV being subsidised by the Government.

¹⁰ No. 6 of 2022.

¹¹ No.4 of 2022.

¹² No. 4 of 2003.

Adult survivors placed at the shelters for the following financial years

Financial Year	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022
Number of victims	31	58	77	39	31	295

Source: Child Care and Protection DHIS2 database, 2023.

There is a surging number of GBV victims accommodated in Financial Year 2021/2022 at the shelters as the Government shelters started to operate in the same year.

37. Namibia has ratified numerous international and regional protocols and now needs to be able to report the nation's response to GBV, VAC, and TIP as part of the country's Sustainable Development Goals (SDGs). Dedicating national resources to the provision of safe houses is paramount to supporting the health and safety development of women, men, and children. Government provides safe accommodation, psycho-social support (which includes counselling), medical assistance, recreational activities, basic needs including food and clothing, access to travel documents and safe return.

38. Namibia has over twenty (20) residential childcare facilities designated as places of safety under Child Care and Protection Act, 2015 where safety and care is provided to children who are found to be in need of protective services. These facilities are used as shelters for children who are victims of GBV/VAC or TIP and where alternative placement with family members is not viable, hence the use of such facilities. The Ministry of Gender Equality, Poverty Eradication and Social Welfare (MGEPESW) has a dedicated budget to subsidize these facilities as well as provide regular inspections to ensure that they adhere to policy and regulations. One of the facilities is fully managed and funded by the Government, under the auspices of the MGEPESW.

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

Reply to paragraph 8 of the list of issues

39. The Abortion and Sterilization Act, 1975¹³ provides for circumstances under which women and girls 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 Deputy-Minister of Health and Social Services tabled a motion in 2020, to stimulate public discussion on abortion for purposes of establishing the general views of Namibians on abortion. The Government through the Ministry of Gender Equality, Poverty Eradication and Social 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.

40. In compliance with the Child Care and Protection Act, 2015 (CCPA), the MGEPESW¹⁴ has set up a national program to identify and register prospective adoptive and foster parents. The programs culminate from the provision of the CCPA, which obligates the State to decriminalize baby abandonment by desperate parents and to offer alternative care options to their children.

41. Through this program, a National Family Register (Register for Adoptable Children and Protective Adoptive Parents – RACAP) was established. The Register keeps a detailed record of persons, recruited by social workers across the country to foster or adopt children in need of protective services. The system has been expanded to include the details of adoptable children and those in need of alternative care placement.

42. Namibia has developed and implemented a National Reproductive Health Policy of 2012. The policy operates on four (4) different levels, national, regional, district and community levels. In order to make this policy more effective, a multi sectoral approach has

¹³ Act No. 2 of 1975.

¹⁴ In compliance with the Child Care and Protection Act, No. 3 of 2015.

been employed in which other line ministries have a stake in its application to efficiently aid service delivery. The policy is guided by the International Conference on Population and Development principle on reproductive health that is recognized as a basic human right for every Namibian. The policy calls for community involvement in the planning, provision, and monitoring of reproductive services, and on all stakeholders to offer non-biased, quality services with the aid of necessary skills and knowledge to impact service delivery.

43. Namibia has over the years implemented various revised versions of the National Gender Policy resulting from the Beijing Declaration and Platform for Action. This was done as a means of reaffirming its national commitments on issues surrounding women and the girl child. The policy is reflective of its support to ensure safe and affordable reproductive health services for all Namibians. The policy outlines several strategies such as formulating campaigns to raise public awareness and improve knowledge through the dissemination of HIV/AIDS and SRH information to all.

44. Section 4 of the Abortion and Sterilization Act, 1975 does not allow forced sterilization of persons with disabilities without prior and informed consent. The Ministry of Health and Social Services has revised the consent form for sterilisation of persons to include information needed by the client before giving permission for the procedure to be performed. No person may be coerced to take any type of family planning measures without his/her consent irrespective of background. No person may be coerced or pressurised into having sterilization regardless of his/her HIV status.

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

Reply to paragraph 9 of the list of issues

45. The Namibian Constitution provides for the entrenched right to life and that no law may prescribe death and no court may impose a death sentence under Article 6 and Article 8 provides for the prohibition against torture or cruel, inhuman or degrading treatment or punishment. Namibian Constitution¹⁵ establishes the Namibian Defence Force,¹⁶ the Namibian Police Force,¹⁷ and the Namibian Correctional Service.¹⁸ Each armed force has dedicated legislation setting forth its powers and duties in the following pieces of legislation:

- (a) Police Act, 1990;¹⁹
- (b) Correctional Service Act, 2012;²⁰
- (c) Defence Act, 2002;²¹ and
- (d) Criminal Procedure Act, 1977.²²

46. Section 35 of the Correctional Service Act, 2012 outlines the circumstances in which force or weapon may be utilised. This is supplemented by the Commissioner-General's Directive on Use of Force and Weapon. This Directive came into force on 12 August 2002 and was revised on 17 June 2019. All ranks of Correctional officers are continuously trained on this directive. The subject matter is also part of the basic training of the Training Curriculum of the Namibian Correctional Service Training College where new recruits are trained.

47. Correctional officers who are found to be using excessive force against inmates are subjected to a disciplinary procedure of the Correctional Service in accordance with sections 50, 51 and 54 of the Act. Namibian Correctional Service has a directorate that deals with the discipline of correctional officers, the directorate is called Directorate Legal Services and

¹⁵ Chapter 15 of the Namibian Constitution.

¹⁶ Article 115 of the Namibian Constitution.

¹⁷ Article 118 of the Namibian Constitution.

¹⁸ Article 121 of the Namibian Constitution.

¹⁹ No. 19 of 1990.

²⁰ No. 9 of 2012.

²¹ No. 1 of 2002 as amended.

²² No. 51 of 1977 as amended.

Discipline, and the directorate consist of two divisions, Division Staff Discipline and Division Legal Services in every correctional facility. During the period 2016-2019, 11 civil claims were lodged by inmates for assault against the NCS: 2 cases were settled and compensations were effected, and 9 cases were either decided in favour of the Namibian Correctional Service or abandoned or withdrawn. The Table below illustrates the number of disciplinary cases conducted on officers for assaulting inmates, the weapons used in these cases are rubber buttons and pepper spray.

Statistic of Assault Cases: 2018 to date

<i>No. of assault cases</i>	<i>Disciplinary Measures imposed</i>
20	16 Fines
	4 Acquittals

Source: Namibia Correctional Service.

48. Section 49 of the Criminal Procedure Act, 1977²³ addresses the use of force when effecting an arrest. It applies to both the arresting officer, and to anyone who is authorised to assist with the arrest. The first paragraph of section 49 of the Criminal Procedure Act, 1977²⁴ considers the use of force generally when the person being arrested resists arrest or flees, while the second paragraph determines the circumstances under which lethal force is justified. Section 14 (10) of the Police Act provides that “Any member may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of an offender or suspected offender or persons unlawfully at large”. The provisions of the Criminal Procedure Act, 1977²⁵ and the Public Gatherings Proclamation, 1989 (section 6) are applied subject to 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. Consequently, the State Party submits to the Committee that, it is in compliance with the Covenant in this regard.

49. The Government and or the laws of Namibia does not allow nor condone the use of excessive force against any person. In protection of the right to dignity, the Namibian Constitution prohibits torture as well cruel, inhuman or degrading treatment or punishment and the Criminal Procedure Act, 1977 (Act No. 51 of 1977) criminalises murder as well as assault, including assault with intent to cause grievous bodily harm irrespective of who the perpetrator is. Members of the Police and/or Defence force accused of using excessive force are investigated under the internal complaints unit and those found guilty of acting outside the scope of what is reasonable in the circumstances are subjected to prosecution. Members of the Police and or Defence forces who have been accused of alleged abuse of human rights have been prosecuted and sentenced in various cases. This is evident from the case of *S v. Shetekela*, in which three members of the Windhoek City Police were found guilty of murder and defeating the course of justice and subsequently sentenced to 14 years imprisonment.²⁶

50. In addition to Namibia’s legislative and judicial framework, the Office of the Ombudsman has also launched a Training Manual to train police officers to understand the concept of torture, both from an international, regional and national perspective, and how to prevent any acts that would amount to torture and the violation of entrenched human rights. The Namibian Police Force conducts basic and continuous refresher courses on Government’s Human rights compliance. The Ministry of Justice through the Inter-Ministerial Committee on Human Rights and Humanitarian Law holds informative sessions with Governmental and Non-Governmental stakeholders to provide updates on human rights obligations and implementation strategies for the recommendations and related action plans.

51. The law restricts the use of firearms or other weapons likely to cause serious bodily injury or death to situations where less dangerous weapons have first been tried, or where

²³ Supra.

²⁴ Supra.

²⁵ No. 51 of 1977 as amended.

²⁶ (CC 10/2014) [2020] NAHCMD 275 (8 July 2020).

persons attending the gathering (a) kill or seriously injure any person or (b) destroy or do serious damage to valuable property (or “show a manifest intention” of doing any of these things). Namibian Police Human Rights Manual provides essential principles with regards to permissible circumstances and procedures for use of firearms. The principles which apply to the use of force in law enforcement are consistently observed, 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). The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are incorporated in the Namibian Police Human Rights Manual.

52. The Ministry of Defence and Veteran Affairs (MODVA) paid damages to six (6) persons for assault by its members, amounting to a combined amount of N\$385 000.00 (three hundred and eighty-five thousand Namibian dollars) during the financial year 2021–2022. During the financial year 2022–2023, the MODVA paid seven (7) persons a total amount of N\$572 000-00 (five hundred and seventy-two thousand Namibia dollars). During the financial year 2023–2024 the MODVA paid N\$660 000-00 to two persons for assault by officials of the Ministry. All persons who were paid by the MODVA were represented by legal practitioners.

53. The provisions of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials are incorporated in the Namibian Police Human Rights Manual.

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

Reply to paragraph 10 of the list of issues

54. Article 95 of the Namibian Constitution provides for the responsibility of the State to maintain the environment and ecosystems and the sustainable use of natural resources for the benefit of present and future generations. The requirements and processes for consultations with interested and affected parties are set out in the Environmental Management Act, 2007.²⁷ The Republic of Namibia has embraced the development of green hydrogen to reduce its carbon emissions. All activities of Oil and gas exploration are subjected to regulatory requirements which must be met. According to the Environmental Clearance Certificate approved by the Ministry of Environment and Tourism, the exploration activities will not cover the entire license area and will be limited to an area situated about 80 km south of the Okavango River, 40 km from the boundary of the Khaudum National Park and is more than 260 km from the Okavango Delta in Botswana. The approved two stratigraphic wells are furthermore not located in any conservancy or environmentally sensitive area that is not bigger than 250 x 250 meters around each. The actual size of the well to be drilled is about 30 x 30 centimetres.

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

Reply to paragraph 11 of the list of issues

55. Incidents of human rights violations committed by certain members of the security forces during past crime prevention operations were reported to the Namibian Police Force and criminal cases were registered and investigated. In certain instances, violators of fundamental human rights were charged with such crimes and the matters are before court and some of the victims have instituted civil claims against the State for such violations with the view of restitution or compensation. The table below outlines the years and number of civil claims, involving human rights violations that were settled by the Namibian Police Force.

²⁷ No. 7 of 2007.

2016	2017	2018	2019
7	5	7	13

Source: Namibian Police Force.

56. As previously reported, the State party has drafted the Prevention of Combating Torture Bill to give effect to Namibia's obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and to criminalise offences of torture and other forms of cruel, inhuman, and degrading treatment. This Bill is currently being reviewed by the Ministry of Justice to address some concerns raised by the National Assembly concerning, amongst others, appropriate penalties for torture, before it can be re-tabled in Parliament.

57. The Committee is hereby informed that prostitution is not legal in Namibia. The Namibian Police Force has not received any formal allegation of harassment of sex workers by its members during the reporting period.

58. The Complaints Directorate is not independent from the Namibian Police Force. However, it operates on independently without interference in their investigations on principles of transparency, honesty, openness and integrity and acts in the best interest of the public to prevent police brutality, protect human rights, prevent corruption and acts of dishonesty; and to establish a culture of accountability in the Namibian Police Force.

60. Namibia Correctional Service has a Directorate of Legal Services and Disciplinary which is responsible for internal investigations and these functions are decentralised. Details of the disciplinary process are set out under the response to paragraph 9 above.

61. With regards to training provided to law enforcement officials on the prohibition of torture and other cruel, inhumane and degrading treatment or punishment, the Directorate has an obligation to conduct awareness campaigns to five hundred and twenty-five (525) participants per quarter and two thousand one hundred (2,100) members per annum which is strictly adhered to. The Namibian Police Force has ongoing workshops to train police officers on human rights in accordance with the Namibian Police Human Rights Training Manual. The Ombudsman's office embarked on a Prevention of Torture Project and developed a Prevention of Torture Training Manual for police officers that resulted in training workshops during the period of 2015–2017, in various regions of Namibia. The Ombudsman's Office is now planning to continue training which targets newly recruited officials. Ombudsman's Office visits and inspects places of detention-trial awaiting inmates at the police holding cells and sentenced inmates at the correctional facilities.

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

Reply to paragraph 12 of the list of issues

62. The Republic of Namibia continuously implements the Combating of Trafficking in Person Act, 2018²⁸ as follows:

(a) A National Referral Mechanism and Standard Operating Procedures on trafficking in Persons was developed and was launched on 29 March 2019, for the referral, assistance, and protection of all Victims of Trafficking (VoTs) in Namibia, to increase the identification rate of potential VoTs, to contribute to a coordinated and efficient response to Trafficking in Persons, for all VoTs allow to enjoy their rights and their safe return;

(b) The National Coordinating Mechanism is in place to ensure effective and timeous coordination among stakeholders. This mechanism has different committees and bodies which consist of:

²⁸ No. 1 of 2018.

- (i) National High-level Committee chaired by the Deputy Prime Minister and Ministers from various Offices, Ministries, and Agencies;
- (ii) The National Technical Committee consists of Executive Directors of the above-mentioned Offices, Ministries, and Agencies;
- (iii) The Inter-ministerial Committee consists of senior officials from different key line Ministries; and
- (iv) The National Coordinating Body (NCB) on Trafficking in Person consists of offices. Ministries and Agencies, Non-Governmental Organisations /Civil Society, Churches, and Academia.

63. Capacity Building:

- (a) Training on Combating Trafficking in Persons is offered and continuously takes place. Training has been offered to officials with technical support from the Development Partners trained officials include: Gender Liaison Officers, Police Officers, Prosecutors, Social Workers, Media Practitioners, Programme Officers, law enforcement officers and members of the Judiciary, Non-Governmental Organizations and Faith Based Organisations.
- (b) Social Workers from different institutions have also been trained on the National Referral Mechanism (NRM) and Standard Operational Procedures (SOP).
- (c) Trafficking in Persons has been mainstreamed into the Immigration Training program.
- (d) The Ministry of Gender Equality, Poverty Eradication Social Welfare, and key stakeholders continuously provides technical training to staff members on Trafficking in Persons (TIP).

64. Awareness Campaigns:

The Ministry of Home Affairs, Immigration, Safety and Security in collaboration with the organisation: *Love Justice* carries out a project that monitors movements at border entry posts. Namibia has intensified the *Blinded and Sold Campaign* currently being aired on NBC radio and television, creating awareness amongst the youth in both urban and rural areas. This campaign was developed in partnership with the International Organisation for Migration (IOM). The Ministry of Gender Equality, Poverty Eradication and Social Welfare (MGEPESW) and stakeholders in collaboration with IOM also reviewed the existing TIP, the *Blinded and Sold* campaign was re-launched on 29 March 2019 and is currently ongoing.

65. National Plans of Action on Gender Based Violence:

- (a) The Previous National Plan of Action on Gender-Based Violence (GBV) 2012–2016, and the current National Plan of Action on Gender Based Violence 2019–2023 (currently under review) both contain strategies and action areas to make sure that special measures are implemented to combat trafficking in Persons;

- (b) The National Action Plan on Trafficking in Person 2023-2027 was officially launched on the 28 July 2023. This Action Plan was developed to ensure that actions are taken to protect and ensure the safe return of Victims of Trafficking (VoTs). This plan enhances a coordinated and efficient response to trafficking in persons (TIP) in Namibia, it also ensures the operationalization of the Combating of Trafficking in Persons Act,²⁹ to confront suspicious TIP activities as well as provide prevention measures necessary for TIP and protection of victims and potential victims.

66. Shelters for Victims of Trafficking in Persons:

Three (3) shelters were upgraded to accommodate Victims of Trafficking in Persons.

²⁹ No. 1 of 2018.

67. Statistics on the number of cases reported, investigations and convictions:

(a) From 2010 to date, a total of 101 cases of trafficking in persons have been reported in Namibia, of which 38 are under investigation, 29 are on the courts roll awaiting trial, 5 cases have been submitted to the Prosecutor General for her decision and 34 cases have been finalised;

(b) Sixty (60) Victims of trafficking were identified, among them there were males, females including children, and were provided with victim assistance.

68. The Government does not have any exit programs in place for persons who wish to leave prostitution specifically, in terms of sexual exploitation.

69. Child labour is prohibited by the Namibian Constitution under Article 15, Child Care and Protection Act, 2015,³⁰ and the Labour Act, 2007.³¹ In addition to the aforementioned laws, Namibia has signed the International Labour Organisation (ILO) Conventions on the Minimum Age for Admission to Employment,³² and on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour,³³ to name few.

70. The Labour Act gives effect to the provision of the Namibian Constitution and the ILO Conventions by making illegal to employ a child under the age of fourteen (14), and by restricting employment for children between the ages of fourteen (14) and eighteen (18). The Child Care and Protection Act, 2015 complements the Labour Act, 2007 by providing additional provisions on the protection of children from the worst forms of child labour or exploitation. The Ministry enforces sections 3 and 4 of the Labour Act, 2007³⁴ in prohibition and restriction of child labour:

(a) The Ministry of Labour, Industrial Relations and Employment Creation has 14 regional offices, with a total of 50 Labour Inspectors (Basic Conditions of Employment) mandated to enforce child labour legislation and investigate allegations of violations, including forced labour;

(b) Efforts to address Child Labour and forced Labour:

(i) Legal framework that regulates child labour- Namibian Constitution, article 9 on Slavery and Forced Labour and article 15 on Children's Rights; Labour Act, 2007³⁵ Chapter 2, on Fundamental rights and Protection which provide for the prohibition and restriction of child labour and forced labour, and

(ii) Namibia has ratified the International Convention on Child Labour; the ILO Convention 138, Minimum Age; and the ILO Convention 182, Worst form of Child labour.

(c) Measures to strengthen the Labour inspection:

(i) Labour Inspector capacity development

In October 2016, around 74 Labour Inspectors responsible for enforcing the labour laws were capacitated on child labour and domestic work inspection and monitoring. To effectively address child labour, forced labour and trafficking in persons (TIP) the Labour Inspectors usually conduct a joint inspection in collaboration with other Ministries.

(ii) Inter-Ministerial Committee on Child Labour

The Ministry has constituted a National Inter-Ministerial Committee comprised of representatives from different offices, Ministries and agencies on Child Labour to ensure the prohibition and elimination of any form of child

³⁰ No. 3 of 2015.

³¹ No. 11 of 2007.

³² ILO Convention 138.

³³ ILO Convention 182.

³⁴ No. 11 of 2007.

³⁵ Supra.

labour. The Ministry is in the process of developing the National Action Plan for the elimination of child labour in Namibia.

(iii) Education Awareness

The Ministry of Labour, Industrial Relations and Employment creation during the period under review always conducts education and awareness sessions on different platforms about the illegality and harmful effects of child labour and forced labour in the Country.

(d) The Namibia Police investigates all the cases reported for offences involving contravention of section 3 (1) of the Labour Act,³⁶ which states that “a person must not employ or require a child to work in any circumstances prohibited and in terms of section, (2) a person must not employ a child under the age of 14 years”;

(e) The Wage order setting minimum wage and supplementary minimum conditions of employment for domestic workers in Namibia stipulates that, a person must not employ a child under the age of 18 years as a domestic worker;

(f) In terms of the Labour Act, 2007³⁷ a person must not employ a child under the age of 14 years. It is an offence for any person to employ, or require or permit, a child to work in any circumstances prohibited. The Labour Act, 2007³⁸ prohibits forced labour and it is an offence for any person to directly, or indirectly, cause, permit or require an individual (including a child) to perform forced labour prohibited. Namibia is currently engaged in bilateral talks with Angola for purposes of addressing the increase in women and children of Angolan nationality in Namibia for purposes of finding a workable solution that benefits the women and children.

Liberty and security of the person (art. 9)

Reply to paragraph 13 of the list of issues

71. The Namibian criminal justice system makes provision for accused persons to apply for bail for certain offences. The Criminal Procedure Act, 1977³⁹ provides for granting of bail before a person appears in the lower court, and upon first appearance in the lower court. It also makes provision for conditions of bail. The Namibian Constitution requires that, persons who are arrested and detained in custody, must be brought before court within a reasonable time. Namibian courts have interpreted this provision by placing a requirement that, persons who are arrested must be brought before court within 48 hours from the time of arrest or immediately soon thereafter. The provisions relating to bail consequently, where bail is granted, there is a resultant reduction excessively long pretrial detention.

72. The Criminal Procedure Act, 1977⁴⁰ read with the Rules of the relevant court provide for accused persons to exercise their right to take a decision of the lower court on review or institute appeal proceedings.

73. The Namibian Correctional Service (NCS) has a population of 4829 inmates of which a total of 222 are pre-trial inmates as of 29 February 2024. The number of inmates in pre-trial detention during the period under reporting at NCS facilities is as follows:

Year	Number of Inmates on Pre-Trial Detention
2016	226
2017	327
2018	305
2019	216

³⁶ No. 11 of 2007.

³⁷ supra section 3 (2) (6).

³⁸ supra section 4 (1) and (3).

³⁹ Section 59 – 71 of the Criminal Procedure Act, No. 51 of 1977 as amended.

⁴⁰ Section 65 Act 51 of 1977 as amended.

Year	Number of Inmates on Pre-Trial Detention
2020	156
2021	72
2022	171
2023	441

Source: Namibia Correctional Service.

The average period an inmate is detained in pre-trial detention varies from 6 months to two (2) years during this period under reporting.

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

Reply to paragraph 14 of the list of issues

74. Namibian Police Force - The table below outlines the number of detention facilities built, to be constructed, to be upgraded and already upgraded by the Namibian Police Force:

Newly built	To be constructed	To be Upgraded	Upgraded
65	16	01	71

Source: Namibian Police Force.

75. Namibia Correctional Service:

(a) The Namibian Correctional Service (NCS) in collaboration with the justice system in Namibia introduced Community Service Orders (CSO) program in 2010 as a measure to reduce overcrowding in the correctional facilities. The NCS has rolled out CSO to 46 courts out of a total number of 71 courts nation-wide. The NCS planned to roll-out CSO to 7 courts in Omaheke and Karas regions during the 2023/2024 financial year;

(b) It is important to note that CSO, as a sentencing option, falls within the domain of the Prosecution and Judiciary by virtue of the Criminal Procedure Act, 1977;⁴¹

(c) There is a reduction of overcrowding since the programme diverts offenders that have committed petty offences to work in the community instead of admitting them into correctional facilities. CSO are being considered as a post-effective practice since on average the government's expenditure is at N\$1987.50 per inmate, per month. Offenders will retain their liberty, maintain their employment if they are employed, enabling them to continue positively contributing to the wellbeing of their family while serving their sentence;

(d) CSO protects some offenders from being exposed to offenders with criminal minds that have committed more serious offences. Offenders serving sentences under CSO are protected from stigmatisation that is associated with incarceration;

(e) The list of courts where CSO was implemented can be availed upon request. The list of Courts where CSO will be implemented during the 2023/2024 financial years. Since April 2019 to 31 Dec 2023, a total of 2030 offenders were placed under CSO;

(f) The NCS has a program for infrastructure maintenance in place which is funded under infrastructure development budget every financial year and measures implementation progress every financial year in the planned objectives of a five (5) years' strategic plan;

(g) The NCS has three (3) programmes of new infrastructure development also funded under infrastructure development budget every financial year and monitors implementation under 5 years NCS Strategic Plan. Conversion of facilities into Unit Management of 120 offender capacity to cater for Offender Risk Correction and Extension

⁴¹ No. 51 of 1977 as amended.

of facilities, to add additional offenders' accommodation, education and rehabilitation program delivery classrooms, arts and craft, industrial workshops and health care facilities;

(h) With regard to improve measures to food provision, the NCS produces food at some correctional facilities; At Hardap Correctional Facility, wheat, vegetables and pork are produced. At E.Shikongo Correctional Facility vegetables, fruits and beef, chicken and eggs are produced. At Divundu Correctional Facility, vegetables, wheat and maize are produced that eventually results into the production of maize meal and bread flour. Oluno Correctional Facility produces Pork;

(i) NCS provides 96 police stations across the country with different food items. Maize Meal is provided to all 96 police stations. Bread is only provided to all police stations in Kavango East and Kavango West Regions and at Omaruru Police station in Erongo Region;

(j) Cleaning materials are provided frequently across all facilities to ensure good sanitation and health, all facilities are clean and have potable with water. All correctional facilities have working groups which include cleaning teams that clean the surroundings and the dormitories. All facilities have a clinic with qualified nurses and the clinics at level I facilities (Hardap, Windhoek, Walvis Bay and Oluno) are supervised by medical doctors.

Treatment of aliens, including migrants, refugees and asylum-seekers (arts. 7, 9, 12, 8 and 13)

Reply to paragraph 15 of the list of issues

76. The table below illustrates the number of illegal immigrants detained, the average duration of detention and the number of deportations.

<i>Detained Persons</i>	<i>2016/2017</i>	<i>2017/2018</i>	<i>2018/2019</i>	<i>2019/2020</i>	<i>2020/2021</i>	<i>2021/2022</i>	<i>2022/2023</i>
Number of persons detained	1 884	979	153	210	133	138	363
Average duration of detention	10 days						
Number of deportees	1 083	549	50	14	0	0	0

Source: Ministry of Home Affairs, Immigration, Safety and Security.

77. Immigration detention is in line with international standards. Section 42 (1) (a) and (b) of the Immigration Control Act, 1993⁴² provide that a person detained as a prohibited immigrant on reasonable grounds may not remain detained for a period longer than 14 days at a time. Additionally, if a person suspected of being a prohibited immigrant is arrested/detained without a warrant, he/she must be brought before an immigration officer as soon as is practicable and may also not be detained for a period longer than 14 days at a time.

78. The Committee is hereby informed that all asylum seekers in Namibia go through the Refugee Status Determination Procedures (RSD). Asylum seekers who meet the criteria for refugees' status in terms of section 17 of the Namibia Refugee (Recognition and Control) Act, 1999,⁴³ are given refugee status. The population of asylum seekers and refugees in Namibia at the time of period of reporting stood at 5439. The majority of them are from the Great Lake regions with Democratic Republic of Congo (DRC) leading the list.

79. The table below illustrates asylum seekers received and registered in Namibia during 2016/2017, 2017/2018 and 2018/2019 financial years.

⁴² No. 2 of 1999.

⁴³ No. 2 of 1999.

<i>1. Asylum Seeker</i>	<i>2016/2017</i>	<i>2017/2018</i>	<i>2018/2019</i>
Application for asylum received	168	457	471
Application approved (refugee status granted)	17	91	180
Application rejected (1st instance rejection)	151	366	481
<i>2. Appeals</i>	<i>2016/2017</i>	<i>2017/2018</i>	<i>2018/2019</i>
Appeal received	74	264	131
Appeal approved (refugee status granted)	56	222	76
Appeal rejected (final rejection)	18	42	55

Source: Ministry of Home Affairs, Immigration, Safety and Security.

80. On access to the labour market by refugees, section 18 of the Namibian Refugees (Recognition and Control) Act, 1999,⁴⁴ read with section 27 of the Immigration Control Act, 1993,⁴⁵ makes provisions for refugees who wish to work or establish own businesses in Namibia.

81. Similarly, section 21 of the Namibian Refugees (Recognition and Control) Act, 1999⁴⁶ makes provision for asylum seekers and refugees to be issued with exit permits if they intend to leave the settlement or reception area. Therefore, asylum seekers and refugees are allowed to move to any part of the country if they are issued with a written permission by an authorised officer or any other person in charge of the reception area or refugee settlement area. Furthermore, recognised refugees are given Refugee Identity Cards and refugees who intend to travel outside Namibia are issued with Refugee Travel Documents with enhanced security features.

82. Upon application, in terms of section 18 of the Namibian Refugees (Recognition and Control) Act, 1999,⁴⁷ Refugees are provided with Employment permits to work at public or private institutions or to own private businesses. Section 20 of the afore mentioned Act, provides for asylum seekers and refugees to be issued with exit permits if they intend to leave a refugee settlement or reception area. Therefore, asylum seekers and refugees are allowed to move to any part of Namibia or outside Namibia provided they are issued with exit permits.

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

Reply to paragraph 16 of the list of issues

83. The Legal Aid regime of Namibia is governed by the Legal Aid Act, 1990.⁴⁸ The Directorate: Legal Aid within the Ministry of Justice has to date appointed 69 in-house lawyers, appointed to various stations across the country. Their core function is to represent members of our society, who are indigent and would otherwise not afford legal representation, before all Namibian courts. The approved structure remains under consideration to address shortage of staff which has resulted in the external outsourcing of complex matters in the past. The scheme of outsourcing complex cases, especially in civil matters, has proven to be unsustainable and efforts are underway to reform the scheme by enhancing in-house capacity, which should be more sustainable in the long run.

84. An applicant must earn less than N\$ 3 500 to qualify for Legal Aid. A civil law unit under the Directorate: Legal Aid has been established to assist qualifying persons to deal with civil law cases including divorce. There are many factors which may lead to the withdrawal of Legal Aid such as conflicts of cases, conflict of instructions, clients acting contrary to their

⁴⁴ No. 2 of 1999.

⁴⁵ No. 7 of 1993.

⁴⁶ No. 2 of 1999.

⁴⁷ *Supra.*

⁴⁸ No. 29 of 1990.

instructions, untenable instructions and in some instances the clients opt to relieve their legal aid counsel.

Statistics For Legal Aid for the Financial Years 2015–2023

Years	Number of applications		Refused	Pending
	Received	Granted		
2015/2016	8 943	6 095	1 826	1 022
2016/2017	9 707	6 344	2 366	997
2017/2018	9 487	6 514	2 064	909
2018/2019	9 607	6 867	2 044	696
2019/2020	10 669	7 193	2 667	809
2020/2021	8 521	5 079	2 808	634
2021/2022	8 392	4 634	3 293	465
2022/2023	9 883	5 677	3 425	781
Total	75 209	48 403	20 493	6 313

Source: Directorate: Legal Aid, Ministry of Justice.

85. In Namibia Community Courts are creatures of statute that are established in terms of the Community Courts Act, 2003.⁴⁹ These are courts of record and apply customary law of a given traditional community. Decisions of Community Courts are appealable to the Magistrate Court. Where necessary, litigants in cases appealed to the Magistrate's Court from the Community Court may obtain assistance from the Governments through the Legal Aid scheme if they meet the qualifying criteria. Community Courts are monitored by supervising their operations through verification of their expenditure, reviewing of their case records, training of justices and assessors. Each Community Court has its own account and the amount of money allocated depends on usage of previously allocated funds which amounts range between N\$1 440 000-00 to N\$7 200 000-00 per annum.

Right to privacy (art. 17)

Reply to paragraph 17 of the list of issues

86. Authorities will be required to obtain a search warrant or use of an independent review mechanism or obtain a court order to search the premises or equipment. A choice of the aforementioned has to be made and find its way into the laws. The Data Protection Bill and Cybercrime Bill are still at drafting and consultations of stakeholders' stage. Consultations on the Data Protection Bill have been concluded and the Bill is ready for tabling at the Cabinet Committee on Legislation. The Cybercrime Bill is in at drafting stage.

87. The right to privacy is a constitutional guarantee and the Namibian Government protects this right under Article 13 The Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997) and the Communications Act, 2009 regulate the process and conditions under which interceptions and monitoring of private communication may be conducted. The right to privacy may be limited for purposes of national security and public safety and maintenance of law and order which limitation must be consistent with Article 22 and/or 26 of the Namibian Constitution. Any person whose right to privacy has been unlawfully infringed upon can seek redress through the courts of law.

88. There are no cases of judicial authorisations granted for the surveillance of private communications during the period under review and no complaints were received by Namibia Central Intelligence Service.

⁴⁹ No. 10 of 2003.

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

Reply to paragraph 18 of the list of issues

89. Article 21(1)(a) and (b) guarantees the freedom of speech and expression as well as freedom of thought, conscience and belief including academic freedom in institutions of higher learning. The discussions on the Revised Research, Science, Technology & Innovation (RSTI) Bill were held between the Ministry of Higher Education Training and Innovation (MHETI), Ministry of Justice, the National Commission for Research, Science and Technology and their Legal Counsel. The matter was before the Courts, a settlement agreement was reached between the Parties in October 2023 and made an order of court. The Bill is currently being revised by Government to align with the terms of the settlement agreement, and the Bill will then be scrutinised by the AG before submission to Parliament.

90. The Namibia Broadcasting Corporation and Communications Regulatory Authority of Namibia are both established by their respective statutes⁵⁰ passed by Parliament whereby each of these institutions are governed by independent Boards of Directors and as such the management of these entities are only accountable to their respective Boards. In terms of There is no political interference to the operations of the Namibian Broadcasting Corporation by the government, although its board members are not appointed by the Minister of Information and Broadcasting. The Namibia Broadcasting Corporation Act,⁵¹ was amended.⁵²

91. Board members of the Namibia Broadcasting Corporation are appointed in accordance with the Public Enterprises Governance Act, 2019,⁵³ and not by the Minister of Information and Broadcasting. Namibia is ranked number one (1) on the 2023 World Press Freedom Index⁵⁴ as the country with the freest press in Africa and ranked 22 out of 180 countries in the world. Freedom of Speech and Expression⁵⁵ which includes freedom of the press and other media is legally guaranteed and observed in practice in Namibia.

92. The Access to Information Act, 2022,⁵⁶ has been passed by Parliament and is set to be operationalised by the Minister of Information, Communications and Technology by notice in the Government Gazette. The Ministry delayed operationalising the Act due to the finalisation of the Regulations which are necessary for implementation of the Act, the regulations are now in the final stage of completion following their scrutiny by the Attorney-General. The Ministry of Information and Communication Technology will conduct public workshops to sensitize the public on the implementation of the Act and how to make use of the processes therein. The Access to Information law will ensure that citizens have access to information that will enable them to make informed decisions about their lives and livelihoods. It will further allow citizen to participate in the democratic processes, enhance transparency and accountability which are the cornerstone in fighting corruption and building public trust, and foster good governance and greater participation of the populace in public affairs.

Reply to paragraph 19 of the list of issues

93. Public Gathering Proclamation of 1989:

⁵⁰ Namibian Broadcasting Act, 1991 (Act No. 9 of 1991) and the Communications Act, 2009 (Act No. 8 of 2009).

⁵¹ No. 9 of 1991.

⁵² Section 6 (1) provides that “The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, section 14 and 15 of the Public Enterprises Governance Act, 2006”.

⁵³ No. 1 of 2019.

⁵⁴ <https://rsf.org/en/country/namibia>.

⁵⁵ Article 21 (1) (a) of Namibian Constitution.

⁵⁶ No. 8 of 2022.

(a) The Public Gathering Proclamation, 1989,⁵⁷ under section 2, provides for the notification procedure⁵⁸ to be followed by a person or persons who intends to hold preside or otherwise officiate at or address a public gathering and the same provision under subsection (6) provides that any person who contravenes or fails to comply with any provision of this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R 4000 or to imprisonment for a period not exceeding two years or both such fine and such imprisonment:

- Section 3 of the Public gatherings Proclamation, 1989 gives power to the Inspector-General of the Namibian Police to impose conditions for holding public gatherings if he has reason to believe that, the public peace would be seriously endangered; the public order would be threatened; any person would be killed or seriously injured or valuable property would be destroyed or seriously damaged; feelings of hostility between different sections of the population of the Territory would be caused, encouraged or fomented; or any person would be compelled to abstain from doing or to do an act which that person is legally entitled to do or to abstain from doing.

(b) There was a request for peaceful demonstration during March of 2023, after taking into consideration the national security interests and the fact that the intended peaceful demonstration was to take place 21 March 2023, which was Independence Day, this request was denied. The Inspector General of the Namibian Police Force had reason to believe that the intended peaceful demonstration may cause feelings of hostility. Under the powers vested in the Inspector-General in terms of section 3 of the Public Gatherings Proclamation, 1989 they were directed to reschedule such intended peaceful demonstration to any date after the commemoration of the national Independence Day. However, they refused and decided to proceed with the demonstration, hence the organizers were arrested;

(c) In respect of the protest against gender-based violence that took place in October 2020, the participants of the said protest shut down the Independence Avenue in Windhoek⁵⁹ and blocked traffic flow. According to the conditions of the demonstration, organisers and participants were urged to ensure that they do not block or hinder the flow of traffic during the period of the peaceful demonstration. The Namibian Police tried to disperse them however, they kept on moving to different locations and later on they started being violent and started throwing stones and that's when teargas was used in order to bring about order:

- In respect of the protest against the seizure of counterfeit goods which took place in Windhoek during May 2022. The organisers made threats towards Chinese nationals, that they will shut down and burn down China town and that's when the Namibian Police intervened to ensure that law and order is maintained. The participants started throwing stones to the members of the Namibian Police. Due to that, they were verbally ordered to disperse, and they failed to comply with that order. Subsequently, the Namibian Police officers made use of tear gas to disperse the crowd. The protesters who refused to disperse were arrested.
- Before the use of teargas, which can only be used with approval of the Inspector-General, the Namibian Police attempted to disperse the crowd in line with section 5 of the Public Gathering Proclamation, 1989.⁶⁰

(d) Members of the Namibian Police Force have been trained in Public Order Management, which involves the use of crowd dispersing equipment and their usage, as well as ways on how to disperse crowds in line with the Public Gathering Proclamation, 1989.⁶¹ During Police Basic Training the members are educated on the use of force in line with the

⁵⁷ AG 23 of 1989.

⁵⁸ Failure to observe the notification procedure laid down under section 2, the Namibian Police will enforce compliance. If a person fails to put in their notification notice at least 3 days before the public gathering, they are normally sent back to comply with the provision instead of charging them.

⁵⁹ Windhoek is the capital city of the Republic of Namibia.

⁶⁰ AG 23 of 1989.

⁶¹ *supra*.

Criminal Procedure Act, 1977,⁶² while also taking into consideration of the human rights enshrined in the Namibian Constitution:

- Through the Public Order Management programme, members also received training on non-violent means of crowd control in accordance with section 5 (1) (2) and (3) of the Public Gathering Proclamation, 1989.⁶³
- Number of In-Service Training Programmes Provided to Members of The Namibian Police Reserve Force in Public Order Management, 2019–2023.

2019	2020	2021	2022	2023
15	39	42	19	34

Source: Namibian Police Force.

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

Reply to paragraph 20 of the list of issues

94. Article 15 of the Namibian Constitution provides for the entrenched rights of the child including the right of every child to have a right to a name and 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 and the system is accessible in all district hospitals.

95. The national birth registration rate is 87.8% and 77.6% for under the age of 5, 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 Kavango West region in the northeast has the country's lowest birth registration rate of 67.3%. The birth registration has been fully digitalized and is an integrated 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 adult Namibians hold an ID card.

96. The provision of national documents which includes the issuing of birth certificates is the responsibility of the Ministry of Home Affairs, Immigration, Safety and Security (MHAISS). The MHAISS has established offices in all towns and cities, as well as in 23 hospitals to encourage early birth registration. If a father denies paternity or is unknown, the mother can register the child on her surname, and the father's details will be left blank. The Child Care and Protection Act, 2015⁶⁴ (CCPA) prohibits schools and hospitals from denying services to children on the basis of not being registered.⁶⁵ The CCPA requires any organ of state to assist the child in obtaining access to public services. Additionally, the Osire Settlement Centre for refugees provides all basic services including birth registration.

97. To address the issues of child abuse and all other form of violence against children, Government conducted a National Survey on Violence Against Children. The Violence against Children Survey measures the prevalence, nature and consequences of physical, emotional, and sexual violence against children and youth.

98. The Violence Against Children Survey of 2019 was a nationally representative household survey of 13–24-year-old males and females, sampling 5 191 (980 male and 4211 females) respondents who were interviewed about their experiences of physical, sexual, and emotional violence. The Study confirmed that overall childhood violence had a prevalence rate of 39,6 % among females and 45% among males.

99. Government utilised the findings of the Violence Against Children Survey of 2019 to develop a multi-sectoral plan of action to address violence against children. The National Plan of Action on Violence Against Children is expected to end in the year 2025, the strategies in the Plan of Action are premised on the INSPIRE Strategies and address issues

⁶² Act No. 57 of 1977.

⁶³ AG 23 of 1989.

⁶⁴ Section 232 (1).

⁶⁵ Section 145 (3) (t).

related to strengthening and enacting legislation on children, addressing corporal punishment, child marriages, and carrying an intensive campaign on violence against children.

100. The Republic of Namibia has a Children's Advocate who plays a vital role in relation to children in conflict with the law under the Child Care and Protection Act, 2015. The Children's Advocate is mandated in terms of section 25 of the CCPA to receive and investigate child-related complaints from any source including the child.

101. The Child Care and Protection Act, 2015 has placed measures in place to protect children from harmful cultural and religious practices, and these measures apply to unions under customary law. The CCPA strictly forbids child marriage by making it a crime to grant permission or for cultural reasons, a child out in marriage or engagement if the child is below age 18 or does not consent to the marriage or engagement. This prohibition applies to civil, customary, and religious marriages. This crime is punishable by a fine of up to N\$50 000 or imprisonment for up to ten years, or both.

102. Government conducted a study on child marriage in 2020 and the recommendations from the study included undertaking of law reform initiatives; dissemination of information to ensure comprehensive and consistent implementation to prevent and response to child marriage enhance adolescent and Youth Sexual Reproductive Health; address gender- based violence and harmful practices improve and expand economic incentive to address poverty; conduct community mobilization with a focus on social norms and change; and develop a strategy preventing child marriage in the country. The implementation of some of the recommendations are underway.

103. The Child Justice Bill aims to regulate the criminal procedure applicable to children in conflict with the law, while keeping the best interests of the child as guiding principle. Policy decisions relating to multi-sectoral infrastructure, administration and coordination remain under consideration, after which the Bill will be referred back to the Cabinet Committee on Legislation and thereafter to Parliament.

Participation in public affairs (arts. 25 and 26)

Reply to paragraph 21 of the list of issues

104. The Division on Marginalized Communities within the Ministry of Gender Equality, Poverty Eradication and Social Welfare (MGEPESW), carries out advocacy and awareness campaigns on the human rights of the Marginalized Communities while encouraging self-representations at various levels, without specific focus on representation in governance structures. There is currently no Regional Councillors from the Marginalized Communities. There is a representative from the Marginalized community in Parliament, the Deputy Minister within the MGEPESW.

105. The White Paper on the Rights of Indigenous Peoples in Namibia is aimed at strengthening institutional frameworks, improve coordination, and ensure effective participation and representation for San, Ovatjimba and Ovatué communities.

106. The marginalized communities are represented in Parliament, during the 6th National Assembly, three (3) members of Parliament were from the marginalized 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 marginalized communities in the National Council. In addition, five (5) members from the marginalized community were appointed as staff members under the Office of the President, in the Division for the marginalized communities and one (1) staff member from the Khwe San community was appointed as one of the assistants to the President.

107. The Government consults with marginalised communities on issues affecting them through public consultations. The Division on Marginalised Communities in the MGEPESW is mandated to monitor the impact of measures taken on the enjoyment of the Covenant rights by the San communities. According to the information received from the Office of the Ombudsman, the consultations on the White Paper were inclusive.

Rights of minorities (art. 27)

Reply to paragraph 22 of the list of issues

108. The Environmental Management Act, 2007⁶⁶ provides requirements which must be met by applicants or proponents which includes amongst other things – (b) community involvement in natural resources management and the sharing of benefits arising from the use of the resources, must be promoted and facilitated; (c) the participation of all interested and affected parties must be promoted and decisions must take into account the interest, needs and values of interested and affected parties. Therefore, an Environmental Clearance Certificate to undertake the activity applied for, will not be issued if there is no consultation with the affected community, including indigenous communities.

109. Recon Africa has been subjected to compliance with the requirements of the Environmental Management Act, 2007 during the Environmental Impact Assessment studies as well as during the undertaking and implementation of the approved activities. To date, more than 300 engagements and public consultations with stakeholders including local communities and their traditional leaders have been undertaken as required by law.

110. A full EIA study and all relevant evidence of consultations undertaken is available from the Office of the Environmental Commissioner, including all documentation in electronic format. The Environmental Management Act, 2007⁶⁷ requires that a person may not undertake a listed activity, unless the person is a holder of an environmental clearance certificate in relation to that activity.

111. A full and detailed Environmental Impact Assessment (EIA) study, with due consultations, was carried out as a requirement for the application for the Environmental Clearance Certificate (ECC). The Environmental Clearance Certificate issued to Recon Africa for the drilling of two explorational stratigraphic wells is considered to be in accordance and in full compliance with the provisions of the Environmental Management Act, 2007. The full EIA study and all relevant evidence of consultations undertaken is available from the Office of the Environmental Commissioner, including all documentation in electronic format.

112. The Environment Management Act, 2007⁶⁸ requires that a certificate of compliance must be issued to an applicant after a rigorous process involving compliance with the provisions of this Act. The Environmental Commissioner is required to reject an application for environmental clearance certificate where the requisite requirements are not met.

113. Where an applicant or proponent who made an application fails to comply with the requirements of the Environmental clearance certificate at application or after it has been granted, the applicant may commit an offence and if found guilty by a court of law a fine of N\$500 000-00 may be imposed.

Reply to paragraph 23 of the list of issues

114. Access to land for marginalised communities:

(a) The Government convened the Second National Land Conference,⁶⁹ with the main objective of reviewing the progress made towards the implementation of the 24 Resolutions of the 1991 National Conference on Land Reform and the Land Question in Namibia. Two of the resolutions of the 2018 Second National Land Conference are addressing the land challenges of indigenous people in Namibia. These resolutions are as follows:

(i) Develop a policy to ensure the prioritization of various categories of Disadvantaged Communities in land reform programs;

⁶⁶ Section 3 of Act No.7 of 2007.

⁶⁷ Section 27 of the Environmental Management Act, No. 7 of 2007.

⁶⁸ No.7 of 2007.

⁶⁹ Held during 1 – 5 October 2018.

(ii) Review and harmonize all legal instruments related to disadvantaged communities.

(b) The Ministry of Agriculture, Water and Land Reform (MAWLR) developed programmes assisting in the implementation of these two (2) resolutions, which will assist the Government of the Republic of Namibia in resolving land related challenges of the indigenous people in Namibia;

(c) The National Resettlement Policy is one of the instruments in the MAWLR that guides land redistribution or resettlement programme in the country. This Policy was recently reviewed to cater for the needs of marginalised communities in Namibia, among others;

(d) During the period under review, the MAWLR coordinated with the Ministry of Gender Equality, Poverty Eradication and Social Welfare in the management and administration of Nine (9) Farms acquired for the San community, four (4) farms were acquired before the period under review. The nine (9) farms are as follows:

No.	Farm Name	No.	Year acquired	Year transferred	Size (ha)	Regions
1	Seringkop	454	2007	2008	6 531.1945	Kunene
2	Portion 2 of Koppies	457	2008	2009	1 436.6759	Kunene
3	Farm Bellalaika	458	2009	2010	3 527.6445	Kunene
4	Mooiplaas	462	2009	2010	6 538.054	Kunene
5	Nuchas	468	2010	2011	6 361.4237	Kunene
6	Werda	469	2010	2011	6 414.184	Kunene
7	Toevlug,	461	2011	2012	6 217.6238	Kunene
8	Ondera & Kumewa	308 & 1072	2012	2013	7 147.5963	Oshikoto
9	Uitkomst	412	2006	2007	6 389.11	Otjozondjupa
Total					50 563.5067	

Source: Ministry of Agriculture, Water and Land Reform.

115. The Communal Land Reform Act, 2002⁷⁰ recognizes the right of Namibians to acquire customary land rights. All communal land areas vest in the State in trust for the benefit of the traditional communities and for the purposes of promoting the economic and social development of the people in those communities of Namibia, in particular the landless and those with insufficient access to land, who are not in formal employment or engaged in non-agriculture business activities.⁷¹ The Communal Land Reform Act, 2002⁷² prohibits fencing of communal land in Namibia. A new resettlement criterion is under development and will cater for marginalized communities including the San.

⁷⁰ Communal Land Reform Act, No. 5 of 2002.

⁷¹ Section 17 of the Communal Land Reform Act, No. 5 of 2002.

⁷² Section 18 of the Act mentioned above.