



Convention on the Rights of the Child

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Committee on the Rights of the Child

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Item 4 of the provisional agenda

Consideration of reports of States parties

Implementation of the Convention on the Rights of the Child

List of issues concerning additional and updated information related to the second and third combined periodic report of Namibia (CRC/C/NAM/2-3)

Addendum

Written replies of Namibia*

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

Part I

Reply to the issues raised in part I, paragraph 1, of the list of issues (CRC/NAM/Q/2-3)

1. Child Care and Protection Bill: The Cabinet Committee on Legislation (CCL) is the highest legislative authority and includes Cabinet Ministers and members of the judiciary. The CCL has previously reviewed the Child Care and Protection bill and given comments for incorporation. The Ministry of Gender Equality and Child Welfare (MGECW) incorporated the comments, inter alia, consulting further with traditional authorities and with the Ministry of Education and Finance. The CCL re-reviewed the Bill on 29 March 2012 and approved it subject to clearance by the legal drafters in the Ministry of Justice. The Bill is currently with the legal drafters, who are expected to shortly return the bill to the MGECW with comments. Once these comments have been incorporated it will be tabled before Parliament. The MGECW is optimistic that the Bill will be tabled before Parliament in the September 2012 session. A further workshop is planned in August 2012 with Parliamentarians to explain the Bill as a step towards facilitating Parliamentary approval.

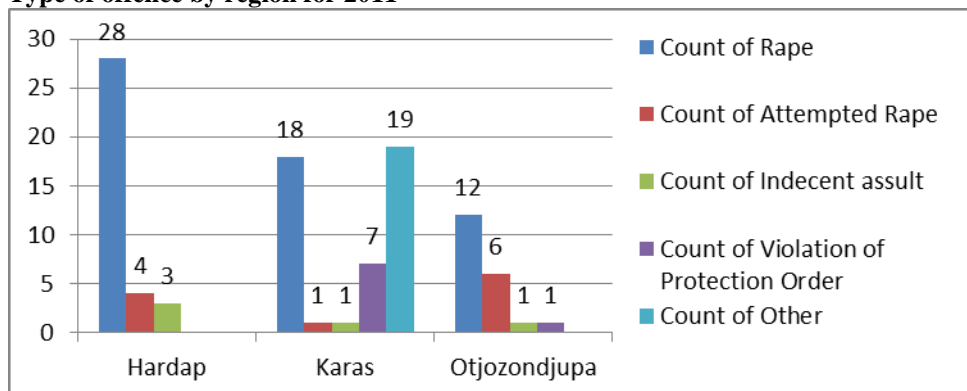
2. The MGECW have drafted the accompanying Regulations for the Bill and are optimistic that once the Bill is promulgated in Parliament, it will shortly come into force with approval of the Regulations.

3. Child Justice Bill: The bill has been in draft for ten years (since 2002). An inter-ministerial committee led by the Ministry of Justice and including the Ministry of Gender Equality and Child Welfare, the Ministry of Youth, National Service, Sport and Culture, and the Ministry of Safety and Security have convened to discuss approval of the Child Justice Bill. It was recently confirmed that the Ministry of Justice will formally lead the process of finalizing the bill. During the 2010 Universal Periodic Review for the Office of the High Commissioner for Human Rights, the Government internally recognized that this Child Justice Bill is a priority. The Bill finalization is on the annual workplan for the Ministry of Justice but no substantive action has taken place in 2012.

Reply to the issues raised in part I, paragraph 2, of the list of issues

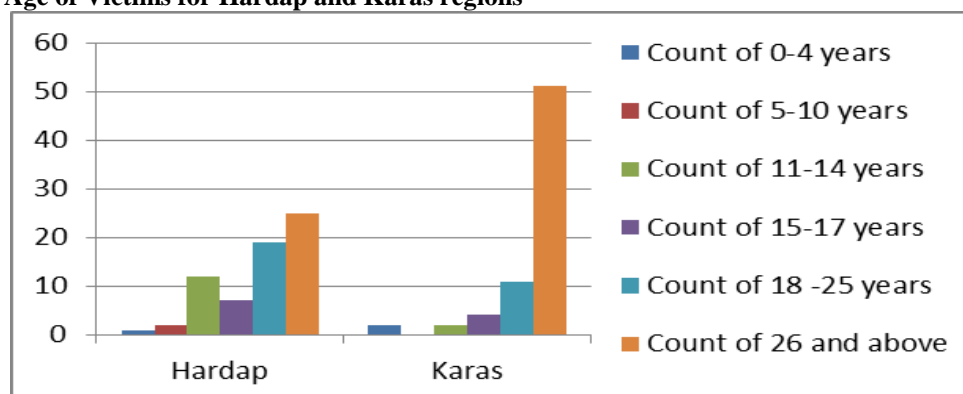
4. Number of cases of torture or ill-treatment of children: The 15 Woman and Child Protection Units (WACPU) are currently dealing with 9,539 cases (some from 2000) of violence but are unable to disaggregate this information by gender or age, though the majority of cases usually involve women and children. The WACPU routinely collect data on cases of violence perpetrated against women and children. They are currently working to improve data analyses, and are in discussion to potentially introduce an electronic database. Information for 2011 is available from 3 of the 15 WACPU, with 2 having age disaggregated data.

Table1
Type of offence by region for 2011



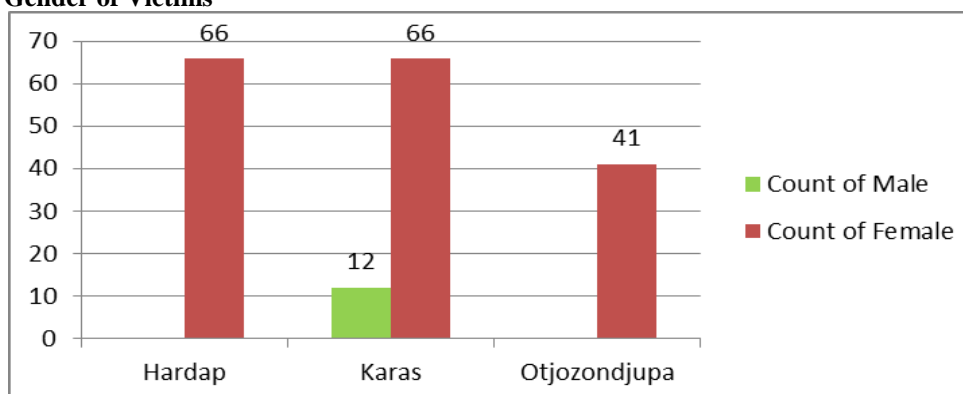
Source: WACPU data for 2011

Table 2
Age of Victims for Hardap and Karas regions



Source: WACPU data for 2011

Table 3
Gender of Victims



Source: WACPU data for 2011

Table 4

Gender Based Violence statistics of victims including adults and children

<i>Reported cases by type</i>	<i>Adults</i>		<i>Children</i>		<i>Total</i>
	Male	Female	Male	Female	
Gender Based Violence	6819	4235	233	567	11854
Rape	38	634	20	380	1072
Attempted Rape	2	225	3	32	262
Assault with intent to rape	1	6	0	1	8
Murder with fire arm, other weapons or by any other means	254	49	11	8	322
Indecent assault	12	72	1	4	89
Cruelty to ill treatment and neglect of children	0	0	11	4	15
Abduction	0	0	10	18	28
Indecent offense against female person	0	10	0	10	20
Sexual offences with youths, illicit anal intercourse	0	3	0	9	12

Source: *NAMPOL Crime Prevention Unit, 2010*

5. LifeLine/ChildLine is a non-governmental organization (NGO) which runs a toll-free child helpline with counselling services. It works closely with different service providers, and addresses protection, gender, HIV prevention and behavior problems. In 2011 they received 27,706 phone calls through the helpline and provided information and counselling, and made referrals for 9,567 of the calls. The table below is a useful proxy to give some indication of the cases of ill-treatment of children.

Table 5

Lifeline/ChildLine type of phone calls received by toll-free child helpline

<i>Breakdown by type of Phone Calls received</i>		<i>Total Calls received</i>
a.	Abuse and Violence	144
b.	Commercial Exploitation	182
c.	Discrimination	214
d.	Family relationships	188
e.	HIV/AIDS infected/affected children	212
f.	Homelessness/runaways/basic needs	51
g.	Information requested	4341
h.	Legal matters	121
i.	Peer relationships	147
j.	Psycho-social, mental health	185
k.	Physical health	76
l.	School related	157

<i>Breakdown by type of Phone Calls received</i>		<i>Total Calls received</i>
m.	Sexuality and sexual awareness	3464
n.	Substance use and abuse	77
Total		9567

Source: Lifeline/Childline programme data (2011)

6. Preliminary data from a study on the implementation of the Combating of Domestic Violence Act suggests the following¹:

- 2 out of every 100 victims of domestic violence is a pregnant woman.
- For every victim of domestic violence, six other people are affected. Four are children.
- More than 1 out of 5 victims of domestic violence said that their children had been harmed or threatened by the abuser.

7. Number of children without parental care disaggregated by causes: The Demographic Health Survey (2006) provides data on the percent distribution of de jure children under age 18 by children's living arrangements and survival status of parents, the percentage of children living with a biological parent, according to background characteristics. 36.4 percent of children are not living with a biological parent, and only 25.8 percent are living with both parents. There is no information available on the causes.

Table 6

Percent distribution of de jure children under age 18 by children's living arrangements and survival status of parents

<i>Living with both parents</i>	<i>Living with mother but not father</i>		<i>Living with father but not mother</i>		<i>Percent not living with biological parent</i>
	Father alive	Father dead	Mother alive	Mother dead	
25.8%	27.2%	5.6%	4.2%	0.8%	36.4%

Source: DHS 2006

8. Number of children separate from their parents as a result of court decisions: The Ministry of Gender Equality and Child Welfare provides foster care grants for children without parental care, i.e. who are separate from their parents. These grants require Court approval through the Commissioners of Child Welfare. Whilst a court order is required the majority of foster care cases are in fact kinship care cases in that the child is placed with the extended family. The Child Care and Protection Bill will split foster care into kinship care and foster care. This will give a clearer picture on the above question. The number of foster care grants for the moment is the closest proxy available to measure children separate from their parents as a result of court decisions.

¹ Draft Legal Assistance Centre study (2012) which reviewed 1,122 protection order applications between 2004 and 2006 from 19 of 31 magistrate courts located in 12 of the 13 regions.

Table 7

Beneficiaries of Foster Care Grants

<i>Year (End April)</i>	<i>Number of child beneficiaries</i>
2010	15192
2011	16377
2012	18135

Source: MGECW Database (2012)

9. Number of children with disabilities: There is very little information available on the total number of children with disabilities. The 2006 Namibia Inter-Census Demographic Survey reports that 5% of people in Namibia have a disability. Of this percentage, 11% are classified as having a mental health disability. The survey does not cite separate data on the incidence of mental health disabilities in children. Data is available on the number of children with disabilities accessing education, and number benefiting from disability grants (refer to question 9 below).

10. Number of children who receive anti-retroviral therapy: According to the Ministry of Health and Social Services estimates and projections of the impact of HIV and AIDS in Namibia (2011) a total number of 16,886 children (0-14 years) are living with HIV. By the end of March 2012 a total of 16,010 children were enrolled in HIV-care of which 9,681 children (0-14 yrs) are actively on antiretroviral therapy (ART) reflecting 95% of children on highly active retroviral therapy (HAART). HIV-care services are rendered at 204 facilities while ART for children is only rendered at the main hospitals and health centers due to the complexity of the treatment.

Table 8

Cumulative number of children enrolled in HIV care

<i>Male (0-18 months)</i>	<i>Female (0-18 months)</i>	<i>Male (18m - <5 years)</i>	<i>Female (18m - <5 years)</i>	<i>Male (5 - <14 years)</i>	<i>Female (5 - <14 years)</i>
670	830	1751	1998	5217	5544

Table 9

Number of children on HAART as on 31 March 2012.

<i>Male (0 - <5 years)</i>	<i>Female (0 - <5 years)</i>	<i>Male (5 - <14 years)</i>	<i>Female (5 - <14 years)</i>
1359	1449	3478	3395

Reply to the issues raised in part I, paragraph 3, of the list of issues

11. Corporal punishment in schools and in the home: Article 2(b) of the Namibian Constitution outlaws any form of punishment to any person which is "cruel, inhuman or degrading". Article 56 (1) of the Education Act of 2001 prohibits any teacher or person employed at a private or public school to administer corporal punishment upon any learner, and the draft Child Care and Protection Bill outlaws corporal punishment in all alternative care settings (including schools) and in the home. The Government has outlawed corporal punishment, but it appears that the practice is still widespread. This is illustrated by the wide tolerance on violence against women and children with 35.2% of women agreeing that a husband is justified in hitting or beating his wife for specific reasons, and 40.8% of men agreeing (DHS 2006). In 2011 a parent in a Windhoek school pressed charges against teachers, illustrating that corporal punishment is mainstream, and parents have limited recourse other than through civil courts. This case is still in court.

12. A code of conduct for teachers – a law enforceable tool in the Regulations of the Education Act – was launched by the Ministry of Education in 2004 as a tool to set professional requirements and minimum standards of professional conduct for teachers. The code of conduct applies to all learners and teachers at the school, but no information could be found on how many disciplinary cases were held. The code clearly says that a teacher “may not administer corporal or any other degrading punishment upon a learner”. The Legal Assistance Center produced and disseminated a user friendly comic on the code of conduct to complement the Ministry of Education’s advocacy efforts.

13. Parents/guardians therefore have limited recourse other than through civil courts. Nevertheless, the Ministry of Education published two booklets for teachers containing alternatives to corporal punishment. Routine training of education officers has taken place, including in 2011 where 70 education officers were trained as trainers to prevent corporal punishment. The trained education officers are expected to train other teachers within the regions, but there is no systematic follow up mechanism to monitor and assess coverage and effectiveness of the training. In 2010 the Ministry Education convened a Corporal Punishment workshop in schools, which was attended by 66 key educational staff and civil society representatives and development partners. The workshop developed recommendations for the Ministry of Education, which will guide development of alternative disciplinary models for learners and teachers to be institutionalized, enforced and monitored. Such measures still require further time before they are fully operationalized.

14. Civil society has supported the Ministry of Education to provide teachers with information about alternatives to corporal punishment, and to eradicate its use whilst ensuring teachers feel confident that they can still maintain discipline. For example the Legal Assistance Centre has produced materials that can be used to help educate the teachers and the public about alternatives to corporal punishment. These materials include a 45-minute film, two comics, a poster and two short training guides. The Legal Assistance Centre also educates community members about alternatives to corporal punishment in workshops. They have also produced a comic highlighting the Codes of Conduct for corporal punishment.

15. Other NGOs are also involved in supporting the Ministry of Education, including ChildLine/Lifeline and PEACE (People’s Education, Assistance and Counselling for Empowerment) with counselling and support services for parents. Initially ‘reasonable chastisement’ was permitted, but the Government now focuses on a total ban on the use of corporal punishment and on awareness raising on alternatives to corporal punishment.

16. Alternative Care Settings: Standard 22 “Care Giving Responsibilities” of the Residential Child Care and Facility (RCCF) standards says that “Respect for the child means that physical punishment is never used” and further says that the “RCCF’s Code of Conduct for staff should prohibit the use of physical punishment and violation should lead to dismissal.” The draft Child Care and Protection Bill has says that “A person may not administer corporal punishment to a child at any residential child care facility, place of care, shelter, early childhood development centre, school, including a private or government school, or to a child in foster care, prison or any other form of alternative care resulting from a court order.” The Ministry of Gender Equality and Child Welfare has provided training to all RCCF providers including all social workers who are responsible for overseeing the implementation of the standards. A number of facilities have been

closed down for not adhering to the standards, with the number of children in RCC facilities decreasing from 1,006 in 2008 to 641 in 2012 (in 21 approved RCC facilities).²

Reply to the issues raised in part I, paragraph 4, of the list of issues

17. Progress has been made in improving coverage, quality and capacity of child protection services through capacity support to the 15 Woman and Child Protection Units (WACPU) and community lay counselors; development and utilisation of a child protection manual; support to shelters for victims of abuse; mobilisation of Community Survivor Supporters for victims of abuse, and finalization of the National Plan of Action on GBV. There are currently 102 police officers and social workers in the WACPU.

18. Improved monitoring, prevention and response capabilities of the WACPU were partly achieved. As a result in 2008 the WACPU developed action plans and established 54 Community support groups for improved outreach services. The support groups reached approximately 5,000 community members (including a reported 1,499 primary and secondary school learners) with prevention messages. Inter-ministerial meetings reached 150 service providers in all 13 regions to strengthen collaboration between the police, social workers, public prosecutors, magistrates and medical doctors to improve case management. Fifty-one (51) community-lay counsellors in 16 towns in 3 regions, and 54 community members were trained on providing protection, care and support to abused children and women in communities. In 2009 the WACPU were dealing with 7,567 reported cases (including rape, attempted rape, murder and GBV) of which 11% involved children, and by 2012 this had increased to 9539 cases nationally. The WACPU have recently received additional material support including office equipment for child friendly corners, anatomically correct dolls, hygiene packs, and 4x4 vehicles purchased for each of the units to expand their coverage. Forty police officers and social workers from all 13 regions were trained on the use of the dolls and diagrams when working with children.

19. The Government has established shelters in 7 regions for survivors of gender based violence (including women and children), and has plans to purchase shelters in the remaining six regions. All these buildings are equipped with the office equipment, furniture and household appliances such as stoves, fridges, washing machines, beds and microwaves. Staff members (social workers and police officers) have received in-service training on the operation of shelters. The Government also subsidises a shelter in Khomas region (Friendly Haven Shelter), which provides victim support including therapeutic counselling, court preparations, after care program and community outreach. From January to October 2009 the shelter accommodated 134 victims (74 women, 60 children), and from January to November 2010 the shelter accommodated 121 survivors (51 women, 44 girls and 26 boys). This local shelter was commissioned and served to document lessons learned and good practices that are currently being replicated during the establishment of shelters in other regions.

20. In 2008-2009 the Government developed a child protection manual consisting of 13 modules to train police officers, social workers, magistrates, prosecutors and medical doctors on child protection issues. Between 2009 and 2011, 250 private and public social workers, police officers, immigration and customs officers, and child care workers in 13 regions were trained from the manual, equipping them with the skills and knowledge to respond and prevent child abuse and neglect.

² The MGEWCW ensured suitable alternative care placements were located for children who were found to be in need of protection, but in many of the cases the children had families and were brought to the facilities for fundraising purposes.

21. In 2012 the Government finalized the National Plan of Action on Gender Based Violence (GBV) to guide the implementation of the National Gender Policy. This is the result of the 2007 national conference on GBV, which established a National Advisory Committee on GBV to advise Cabinet and promote gender equality and the advancement of women. The NPA and the Committee are indicative of the high level of political commitment to reduce GBV, including violence against children.

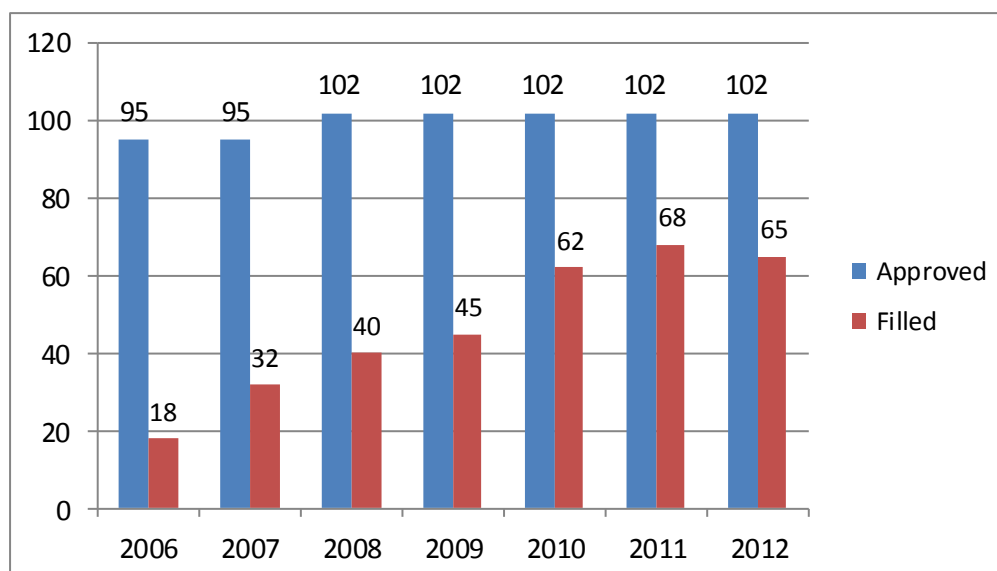
Reply to the issues raised in part I, paragraph 5, of the list of issues

22. Recent developments in alternative care: The Government is committed to supporting family-based care for children in need of care and protection, and aims to prevent the separation of children from families. Following the Alternative Care and Foster care assessments (2008 and 2009) minimum standards were developed for Residential Child Care Facilities (2009), and for Foster Care (2011). Foster care guidelines, a social work training manual for assessment of foster care parents, a training workbook of prospective foster care parents, and a manual for training of prospective foster care parents were developed in 2011, and 15 social workers were trained as trainers. An electronic foster care registrar was developed and linked to the national adoption register, and is currently being populated. Legislative provisions for foster care, and kinship care have been included in the Child Care and Protection Bill. The Ministry is developing child-friendly materials on the standards to improve child participation in this area.

23. Support and monitoring of placements: Government social workers are required to monitor placements especially for Residential Child Care Facilities (RCCF), foster care placements and adoptions. These are stipulated in the RCCF standards, as foster care standards and guidelines. Social workers are on the whole overwhelmed assessing potential child welfare grant beneficiaries (these include maintenance, foster care, and disability grants), with the result that there is limited post placement support and monitoring. In response the Ministry of Gender Equality and Child Welfare has recently created 112 Community Child Care Worker posts and filled 87 in the 106 constituencies, and approved 102 social worker posts and filled 65 in the 13 regions (April 2012).

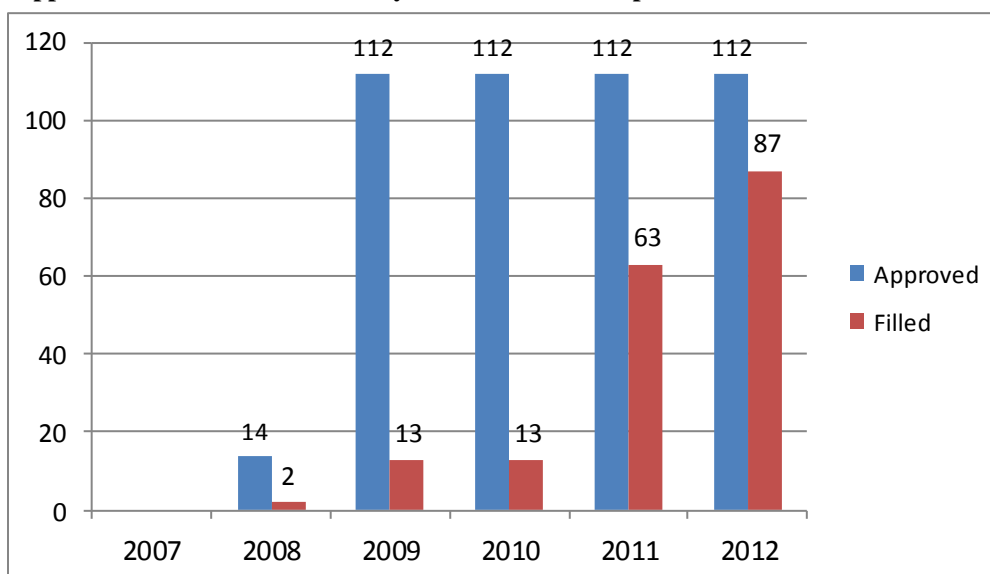
Table 10

Approved versus filled social worker posts within the Ministry of Gender Equality and Child Welfare



Source: MGECW, May 2012

Table 11

Approved versus filled community child care workers posts

Source: MGECW, May 2012

Reply to the issues raised in part I, paragraph 6, of the list of issues

24. Namibia processes approximately 80 adoption applications annually including local and inter-country adoptions (ICA). The current outdated Children's Act is applied and has provisions for local adoptions but not for inter-country adoptions. All adoptions (local and ICA) need to go through the Commissioner of Child Welfare at the Magistrate for final approval. The MGECW used to limit the number of ICAs with a preference for finding local family based care solution (i.e. principle of subsidiarity). However in 2004 a High court ruling (Detmold case) ruled it was unconstitutional to put a blanket ban on not allowing non-Namibians to adopt Namibian children. This ruling created a loophole by enabling ICAs to take place without the involvement of the MGECW, who oversee all adoptions. This hindered the MGECW's capacity to oversee inter-country adoptions and ensure the best interests of the child took place. As a result in 2012 Cabinet issued a directive for the MGECW to facilitate the processes of accession to the Hague Convention on Inter-Country Adoption. The MGECW have included the Hague Convention on ICA in the Child Care and Protection Bill, and steps are underway to establish a Central Authority so that accession can take place. As soon as accession takes place all inter-country adoptions will take place through the approved Central Authority ensuring adequate safeguards are in place.

Reply to the issues raised in part I, paragraph 7, of the list of issues

25. Sexual and reproductive health: The Ministry of Health and Social Services (MOHSS) recognises that the health of children and adolescents is a public health concern. As a result the ministry developed policies, guidelines and standards that address the health of children, such as the National Policy for School Health (2008) and National Standards for Adolescent Friendly Health Services (2011). The MOHSS through the Directorate of Primary Health Care provides school health services, where each district hospital has a school health team that regularly visit schools in their catchment area. Services provided by school teams include Health Education, on the following related topics:

- i. Abstinence, breast self-examination, HIV and AIDS prevention, STIs, pregnancy prevention, contraceptive methods including the female and male condom;
- ii. Information about sexuality, safe sex and relationships, and
- iii. Awareness and prevention information on commercial sex and risks.

26. The National Policy for School Health recommends the implementation of Health Promotion School Initiative, which promotes strengthening of health services to all school going children. It aims to empower children with the knowledge and skills they need to make informed decisions about their health and well-being and to improve their quality of life. The Ministry of Health and Ministry of Education are collaborating to increase the number of schools that can be called health promoting schools. A health promoting school is one that constantly strengthens its capacity as a healthy setting for living, learning and working. The ministry also provides IEC materials related to prevention of teenage pregnancies.

27. The Standards for Adolescent Friendly Health Services are in line with the draft National Policy on Reproductive Health and outline the minimum essential service package which should be available to adolescents at public health facilities in Namibia. A minimum package of Adolescent Friendly Health Services includes: Counselling and Education, clinical services and referrals. Currently, 20% of 411 HIV Counselling and Testing (HCT) sites, primarily at health centers and clinics, in Namibia are characterized as adolescent friendly, however data is not available to know the impact of these sites on testing and services (Namibia Health Facility Census, 2009). The Namibian Family Planning Policy (1995) and draft National Policy on Reproductive Health allows for Sexual Reproductive Health Services (including Family Planning) to be provided to all regardless of age, and without consent for the minors.

28. The Education Sector Policy on Prevention and Management of Teenage Pregnancy was approved by Cabinet in 2009, and includes a strong focus on the prevention of learner pregnancies. The policy allows pregnant girls to attend school until four weeks before giving birth, but does not require that they do so. Each situation is to be assessed and evaluated individually, with sensitivity to the learner's health, financial situation, options for child care, family support or lack of support, the timing of the delivery in relation to the school calendar and the needs of the newborn child. Though the policy was approved by Cabinet in 2009, practical steps towards implementation were only initiated in 2012. The Ministry of Education is currently in the process of developing an implementation plan.

29. HIV and AIDS voluntary counselling and testing: The Government recognises that awareness of HIV status is a critical step towards providing comprehensive care for people living with HIV and AIDS. HIV counselling and testing (HCT) is also an entry point for HIV-prevention services to adolescents. Knowing one's HIV status is very important: it enhances one's ability to reduce the risk of acquiring or transmitting HIV, to access HIV-specific care, treatment and support, and to make informed decisions about other aspects of one's life. In Namibia anyone who is 16 years of age or above is considered able to give full informed consent for HCT. According to the 2008 national policy on HIV/AIDS Testing without parental consent is possible before age 16: "Youth over the age of 16 can access VCT without the consent of a guardian or parent. Children under the age of 16 shall be entitled to access VCT without the consent of a parent or guardian, provided that the child concerned is accompanied by an adult in a position of responsibility such as a religious leader or teacher or relative." The National Guidelines for HIV counselling and Testing in Namibia (2011) says that anyone who is 16 years or above is considered able to give full informed consent for HCT, but where children younger than 16 years are engaged in behaviours that put them at risk or have a STI, they should be considered 'mature minors' and can give consent for HCT. The draft Child Care and Protection Bill will also

allow children over the age of 14 years to independently consent to HIV testing, and a child under 14 years may also consent if he/she has sufficient maturity. The Bill contains provisions for testing including for children to receive pre- and post-counselling.

30. Almost all health facilities (98%) in Namibia have an HIV testing system and are able to offer HCT. Almost 90% of facilities with an HIV testing system have registers for the test results of their clients; 84% of sites have a record for clients receiving their test result. There are no readily-available estimates of VCT service utilization by young people but these can be estimated from two sources:

- National Strategic Framework on HIV and AIDS self-reports (Table 1)
- Routine counselling and testing data

Table 12

Population-based estimates of testing behaviour of Young People by sex and age group, 2000-2006/07

	<i>Male (years)</i>			<i>Female (years)</i>		
	15-19	20-24	15-24	15-19	20-24	15-24
2000 NDHS	5%	21%	13%	9%	26%	17%
2006 NDHS	9%	30%	18%	19%	65%	40%

31. The NDHS (Table 12) suggests that counselling and testing is increasing in both young males and females over time, though testing behaviour is higher among girls and young women than among men. Behaviour is least common among 15-19 year-olds (especially boys), but increases dramatically by 20-24 years.

32. National Testing Day (NTD) data (Table 13) are potentially very biased, given that they are based upon a brief event. But without routine HCT data reports, it is not possible to ascertain how well they reflect the “background” testing behaviour in the population. However, 2008, 2009 and 2010 NTD do reflect the NSF finding that the testing ratio of 15-19 year old females to males is approximately 2:1 or higher, that this ratio decreases somewhat by age group 20-24, and that testing behaviour generally increases among young people with age.

Table 13

Estimates of testing behaviour from National Testing Day data (non-population based, non-probabilistic sampling). Figures represent percentages of all persons tested during the national testing day events.³

	<i>Male</i>				<i>Female</i>				<i>Both</i>			<i>OVERALL⁴</i>
	0-14	15-19	20-24	15-24	0-14	15-19	20-24	15-24	0-14	15-19	20-24	15-24
2008	6%	6%	18%	24%	5%	11%	21%	32%	5%	9%	20%	29%
2009	Age/sex distributions not reported for 2009 and 2010											-----
2010	5% 10% 22%											32%

³ Disaggregated age and sex-specific figures are provided only in the 2008 report. The 2009 report was not separately published by MoHSS, and was included in the 2010 report.

⁴ Percentage of all persons tested who were 15-24 years old.

Table 14

Repeat HCT behaviour seen during 3-day National Testing Day event, 2008. Such data were not reported for 2009-2010 NTDs.

	<i>Female</i>	<i>Male</i>	<i>Repeat</i>	<i>Percent</i>
	Count	Count	testing	Repeating
0-14	1020	809	178	9.7%
15-19	2208	827	480	15.8%
20-24	4380	2430	2004	29.4%
15-24	6588	3257	2484	25.2%

Reply to the issues raised in part I, paragraph 8, of the list of issues

33. Relationship between customary law and positive law: The Constitution recognises customary law and traditional courts, but requires their standards to adhere to the standards of the Constitution. Article 66 (1) of the Namibia Constitution gives impetus to the recognition of Customary law and says, “Both the customary and common law of Namibia in force on the day of independence shall remain valid to the extent to which such customary law or common law does not conflict with this Constitution or any other statutory law”. Article 66(1) puts customary law on the same footing as any other laws as far as its constitutionality is concerned. Customary law should not contravene the Constitution, particularly the provisions of Chapter 3, which contains fundamental human rights and freedoms. Thus, although the constitutional recognition of customary law protects it, at the same time it places a legal duty upon national lawmakers to treat customary law like any other law when it comes to being repealed or amended. Namibia also has a Traditional Authorities Act of 2000 and section 3 shows in detail that the function of a traditional authority can be compared to the functions of the state government.

34. Article 19 of the Namibia Constitution gives recognition to cultural rights, which stipulates that: “Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest”. This constitutional guarantee to the right to culture is enhanced by a similar guarantee in terms of Article 15 (1) (a) of the International Covenant on Economic, Social and Cultural Rights (ICESR). In terms of these two legal obligations, the Government is required to take legislative and administrative measures to ensure the fulfilment of cultural rights, but also to ensure such rights do not contravene the basic tenets of the Constitution.

35. A controversial cultural practice (i.e. corporal punishment) was put to the test shortly after independence.

36. The leading case on the matter is *Ex Parte:Attorney-General, In Re: CP by Organs of State*. In this case, the Attorney General, under the powers vested in him by Article 87 (c) read with Article 79 (2) of the Namibian Constitution, referred the constitutional request to the Supreme Court in order for it to determine: “whether the imposition and infliction of corporal punishment by or on the authority of any Organ of State contemplated in legislation is per se; or in respect of certain categories of persons; or in respect of certain crimes or offenses or misbehaviours; or in respect of the procedures employed during the inflictions therefore in conflict with any of the provisions in Chapter 3 of the Namibian Constitution and more in particular Article 8 thereof”. Article 8 (2) (b) of the Constitution prohibits punishment or treatment that constitutes torture, or is cruel, inhuman, or degrading. Secondly, in deciding what was inhuman or degrading, the Court made a value

judgment by looking at the present values of the Namibian people as expressed in their Constitution. The Court concluded that corporal punishment, whether directed at adults or juveniles was inhuman or degrading punishment and, therefore, in conflict with Article 8 of the Constitution. Regarding the corporal punishment of school children, the court further found that such practice was also in conflict with Article 8, but it did not clearly state that it was torture, cruel, inhuman or degrading punishment.

37. Community Courts: The Community Courts Act of 2003 was enacted to provide for the recognition and establishment of community courts, the application of customary law by community courts and for incidental matters to serve traditional settings irrespective of age, gender, group or tribe. Section 12 of the Act provides for a Community Court with the jurisdiction to hear and determine any matter relating to a claim for compensation, restitution or any other claim recognized by customary law. In light of the above, it is noticeable that the Act does not make specific provision for dealing with children but the court has jurisdiction to apply customary law to all the community members residing in its area of jurisdiction of a particular traditional community irrespective of age group. In any event, because of various technical problems, it is possible that this law may be reconfigured in future.

38. Efforts to assess and eliminate harmful practices affecting children, including child marriages under customary law: Children's rights in Namibia are under Article 15 (1) of the Constitution, which says, "Children shall have the right from birth to a name, the right to acquire nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents". Article 15(2) states that: "Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development. For the purposes of this sub-article children shall be persons under the age of sixteen (16) years". Customary laws do not set a minimum age for marriage, but marriage generally does not take place before puberty, or before the attainment of an acceptable level of social maturity. Family consent is required for a marriage to proceed, but (in most communities) the consent of both the intended spouses is necessary as well. A customary law marriage involves a series of negotiations between two groups and creates rights and responsibilities between all family members. Customary law marriages did not enjoy legal recognition prior to Independence in 1990, primarily because of their polygamous nature. Currently the Legal Reform Development Committee has drafted a piece of legislation on recognition of customary law marriages, for public and stakeholders consultation. There has been no reported case of a forced customary law marriage with a minor girl.

39. Given there is some ambiguity in terms of customary marriages, the Government has included provisions on child marriages in the draft Child Care and Protection Bill. The Bill defines what the term "marriage" means, stating that it applies to both civil and customary marriages, and says that persons under the age of 21 must have parental or guardian consent to marry. The bill is aiming to lower the age of majority to 18 years. The bill also protects children who are forced to marry against their will; it states that no person may force a child to get married or engaged – the child must freely consent to the engagement/marriage. The punishment for forcing a child to marry against their will is a fine of up to N\$50 000 and/or imprisonment for a period not exceeding ten years.

Reply to the issues raised in part I, paragraph 9, of the list of issues

40. San and Ovahimba children: The Education Act 2001 provides for access to impartial, quality and democratic national education. This resulted in the introduction of 45 mobile schools for the Ovahimba children. Timetables are flexible at the schools during

various seasons of the year, irregular attendance of children is accommodated without strict sanction, and teaching content is adapted to the Ovahimba culture.

41. The Office of the Prime Minister as part of the San Development Programme has established the “Back to School and Stay at School Campaign” in 2010 aimed at encouraging learners from marginalised communities to attend and remain in school, and receive an education like other citizens in Namibia. In 2011, the campaign toured several Ovahimba and Ovahimba community settlements in Kunene Region. There is a policy of integration of San children into formal education, and Tsumkwe has a school that specifically caters for San children. Whilst there has been a slight increase in enrolment rates for San children, most indigenous children have very limited access to education. They are unable to pay school fees for secondary schools learners and to purchase uniforms, due in part to high levels of poverty.

42. To solve this, the Ministry of Education in collaboration with other Ministries and NGOs aim to provide the necessary resources. The Ministry of Education has implemented the FAWENA project (Forum for African Women Educationalists in Namibia) that aims to integrate the San into national life by providing them with relevant, culturally appropriate and functional basic education with a special focus on the education of girls. Practically FAWENA provides marginalised children with basic educational needs such as school uniforms, stationery, school development funds, toiletries, transport, examination and hostel fees. In 2011, 133 San learners and 208 Ovahimba and 213 children with disabilities were reached by this programme. Additional to the scholarships, FAWENA provides mentoring activities to these learners to improve school retention.

43. Children with disabilities: The National Policy on Disability provides a policy framework for the social inclusion of people with disabilities. The Ministry of Education has drafted a National Policy on Special Needs and Inclusive Education for learners with disabilities, which focuses on the inclusion of marginalised children and children with disabilities into formal education. It also routinely collects information on learner access to education. The Education Management Information System (EMIS), since 2011, captures data on children with specific disabilities, orphans and vulnerable, and causes of school drop outs.

Table 15

Learners with Disabilities disaggregated by Gender

Region	Learning Disorder	Autistic	Both Visual and Hearing	Partially Blind	Totally blind	Hard of Hearing	Deaf
Total	7,178	317	1,079	5,384	187	5,487	562
Females	3,054	132	619	2,951	109	2,986	287
Males	4,124	185	460	2,433	78	2,501	275
	Epileptic	Behavioural Disorder	Mild Intellectual	Severe Intellectual	Physical	Other	Total
Total	1,317	6,098	3,623	1,033	1,511	1,235	35,011
Females	781	2,013	1,562	427	636	591	16,148
Males	536	4,085	2,061	606	875	644	18,863

Source: Education Management Information System (2011)

44. Namibia is also one of the few African countries that provide disability grants to both adults and children with disabilities. Currently there are 3,772 children (2,135 female/ 1,638 male) with disabilities under the age of 16 who receive social grants. The Child Care and Protection Bill increases assistance to children with disabilities by providing for disability grants to be supplemented to child maintenance grants.

45. Children in street situations: In 2011 the Ministry of Education undertook a country-wide campaign to raise awareness on the situation of children in street situations, and to integrate these children back into schools. Part of the campaign included a nationwide survey in all 13 regions, which identified 1,591 children. Disaggregated data is available for nine regions. Social workers are collaborating with the Police to remove children in street situations and to reintegrate them back with their families.

Table 16

Results of campaign to identify children in street situations (2011)

<i>Region</i>	<i>Girls</i>	<i>Boys</i>	<i>Total</i>
Khomas	36	44	80
Hardap	21	25	46
Ohangwena	10	15	25
Oshana	118	72	190
Kavango	85	120	205
Otjozondjupa	12	15	27
Omaheke	392	433	825
Kunene	Na	Na	250
Caprivi	Na	Na	23
Total	674	724	1591

Source: Ministry of Education 2011

Reply to the issues raised in part I, paragraph 10, of the list of issues

46. Trafficking in children: The Ministry of Gender Equality and Child Welfare published a qualitative baseline assessment of human trafficking in Namibia (i.e. “A baseline assessment of human trafficking in Namibia: a nationally representative qualitative assessment”, 2009). The assessment analysed existing information on human trafficking in Namibia, reviewed the efforts of the government and civil society to address it, identified gaps in the system for dealing with trafficking, and made recommendations. The report found a small number of trafficking incidences but recognised that there could be others. Key recommendations included putting in place legislation to address human trafficking, improving sensitisation and training, and strengthening prevention initiatives and victim assistance programmes.

47. The Child Care and Protection Bill includes a chapter on child trafficking with provisions to guide the prevention and care of a child found to be trafficked, and criminalises child trafficking. The inclusion of the chapter in the Bill on child trafficking should be considered to be temporary in nature, as more comprehensive legislation on trafficking – applicable to both children and adults – appears to be the more appropriate course of action based on recommendations from the Chief of Lower Courts and international experts.

48. Economic exploitation of children: The 2005 National Child Activities Survey (NCAS) was conducted by the Ministry of Labour and Social Welfare to address the lack of updated socio-economic data on the activities of Namibia’s child population. The

Government recognized the need to undertake a survey to generate data that would enhance the understanding of the problems of children including child labour. The survey asked questions to establish whether a child worked in the last 12 months and during the reference week (7 days). A person was considered to have worked if she/he performed any activity for pay (cash or in kind), profit or family gain during the reference period. The work also included unpaid family activity in a family business or farm. Of the total household population of 1,450,767, children aged 6 to 17 years amount to 568,635, or 39.2 per cent. Of these children, 408,638 or 71.9 per cent were found to be working. Overall, the participation rate among children was 71.9 per cent for both sexes, 72.5 per cent for females and 71.2 per cent for males. Out of a total of 408,638 working children in the country, 349,130 were in rural areas, implying that the phenomenon of working children in Namibia is overwhelmingly rural. The 2005 NCAS data reveals that out of all working children, 23,253 or 5.7 per cent (6.7 per cent males and 4.7 percent females) never attended school/training institution. Most of the working children in the country combine work with schooling/training. 86.1 per cent of working children were still attending school or a training institution, while 8.0 per cent had left school. For those children attending school/training institution but also working, 11.5 per cent said that the work they do affected their attendance. The 2005 NCAS data indicate that the use of tools, equipment or machines by working children at the work place was fairly widespread. Injuries or incidents of illness were, however, rare among working children. Over all, only 1.6 per cent of children who were working reported having suffered from an illness or injury due to work or caused at the place of work.

49. As a result of the NCAS assessment the Ministry of Labour and Social Welfare through the Inspectorate Division conducted Joint Child Labour follow-up inspections in the agricultural sector. Joint teams comprising Labour Inspectors, Social Workers, the Namibian Police and the Ministry of Education were formed and visited nine regions where child labour was prevalent during the initial investigation in 2009. The aim of the inspections was to withdraw all children found engaged in child labour activities; to issue compliance orders; to lay criminal charges against those employers who were found to persist employing children as prohibited by the Labour Act, 2007; and to create public awareness against child labour through the media. The findings were as follows:

- 90% of employers complied with compliance orders issued during the 2009 inspections.
- Most communities, employers and parents lacked knowledge and information on the prohibition and restriction of child labour.
- Difficulties were experienced in the placement of children in places of safety following their withdrawal from labour.
- The lack of schools and hostel facilities close to the various farms and villages are obstacles to many children's and parents' desires for their school attendance.
- Poverty is the main cause of child labour and the children employed are from poor families who live with their parents on the farms.

50. Three criminal cases were opened against employers failing to comply with the orders previously issued.

51. The Namibian Constitution says that no one, child or adult, may work as a slave or be forced to work. The Namibian Constitution also states that children must be protected from exploitation. Children under the age of 14 may not be employed and children between the ages of 14 and 16 may not do work that is dangerous, will stop them from attending school or doing their homework, is unhealthy, or will affect their physical, mental, spiritual, moral or social development. The Labour Act of 2007 follows the provisions in the

Constitution and gives more detail. For example, the Labour Act says that children between the ages of 14 and 16 may not work in the evening after 20h00 or before 07h00 in the morning. The additional provisions within the Child Care and Protection Bill complement the Labour Act by providing additional protections against the worse forms of child labour. It also provides limited exceptions (with safeguards) for child actors and children who take part in various other activities, such as concerts and beauty pageants.

Part II

Reply to the issues raised in part II of the list of issues

52. New bills or laws, and their respective regulations: The Regulations for the Child Care and Protection Bill are drafted following an inclusive process, and will come into force as soon as the Bill is promulgated in Parliament.

53. New institutions (and their mandates) or institutional reforms: None

54. Recently introduced policies, programmes and action plans and their scope and financing: The National Agenda for Children was launched by the Prime Minister in June 2012 and is a five-year framework (2012-2016) devised to guide all sectors in Namibia towards fulfilling their obligations to ensure that all rights of children are met. Five priority commitments form the basis of the Agenda, and these build on the achievements and progress made under the National Plan of Action for Orphans and Vulnerable Children (2006-2010), as well as sectoral commitments made by government ministries tasked to fulfil children's rights.

55. The draft Sector Policy on Inclusive Education aims to provide access, equity and quality education to all children. While the policy aims at securing that all children receive education, the policy has a specific focus on children and young people who are more likely to be educationally marginalized in Namibia, and who may be: children of farm-workers; children in remote areas; street children; children in squatter, resettlement and refugee camps; children with disabilities and impairments; children who are considered "over-aged" in the current education policies (be they within or outside the system); children of families in extreme poverty; children who head households; child labourers; children with learning difficulties; orphans and vulnerable children; the girl-child; the learner-parent; children with extreme health conditions/chronic illnesses, children with emotional and behavioural challenges. The draft Sector Policy on Inclusive Education with a Cabinet Submission is on the table of the Minister of Education for his scrutiny before tabling to the Cabinet.

56. Recent ratifications of human rights instruments: Cabinet has issued a directive for the Government of Namibia to accede to the Hague Convention on Inter-Country Adoption. It is anticipated for this to take place within the following 6-12 months.

Part III

Reply to the issues raised in part III, paragraph 1, of the list of issues

57. Number of children registered at birth: The Ministry of Home Affairs and Immigration has recently strengthened capacity to provide routine monitoring data on birth registration. Whilst there are some minor disparities between national and regional data, recent information from these records indicates that 44,809 births were registered in 2008, 41,532 in 2009, 65,405 in 2010, and 65,828 in 2011. Given many registrations are in fact late registration, i.e. the child is over one year of age, it is more reliable to measure the percentage of children who are registered within the first year of birth to track progress.

This has increased from 31% in 2007 to 62% in 2011. Registration rates are however close and over 100% when late registrations are included.

Table 17

Annual Registration rate versus annual birth rate (2009-2011)

<i>Year</i>	<i>Annual Birth Rate</i>	<i>Annual Birth Registration Rate (total)</i>	<i>Children below 1 year</i>	<i>Late Registration (older than 1 year)</i>	<i>% children registered under 1 year</i>	<i>% Annual Registration Rate</i>
2008	65779	44809	20417	22579	31	68
2009	63862	41532	22267	19301	35	65
2010	63263	65405	37410	27995	59	103
2011	67320	65828	41443	24385	62	98

Source: MHAI Regional Data (2011)

58. Since 2011 the Ministry of Home Affairs and Immigration has been collecting registration rates disaggregated by gender at hospital facilities. There are currently 22 such functioning facilities in hospitals. There is no gender bias in terms of birth registration.

Table 18

Annual birth registration rate at hospital facilities (2011)

	<i>Hospital-based facility</i>	<i>male</i>	<i>female</i>	<i>total</i>	<i>Birth rate</i>	<i>% registered immediate after birth in hospitals</i>
TOTAL	22 sites	15143	14781	30245	60283	50%

Source: MHAI Regional Data (2011)

Table 19

Annual birth registration rate by geographical coverage (2011)

<i>Regions</i>	<i># registration under 1 year</i>	<i># registration after one year</i>	<i>Total</i>	<i>Birth Rate (MOHSS 2011)</i>	<i>% Registered before the age of 1 year</i>	<i>Total % Registration rate</i>
Caprivi	1199	1472	2671	3009	40	89
Erongo	2905	451	3356	3935	74	85
Hardap	2088	401	2489	2149	97	116
Karas	947	277	1224	1763	54	69
Kavango	4053	5662	9715	10243	40	95
Khomas	9543	3512	13055	10144	94	129 ⁵
Kunene	1249	2311	3560	2643	47	135
Omaheke	1051	859	1910	1784	59	107
Ohangwena	3703	2608	6311	7775	48	81
Omusati	3805	2088	5893	7113	53	83
Oshana	3855	2706	6561	5610	69	117
Oshikoto	3686	456	4142	7285	51	57
Otjozondjupa	2067	1519	3586	4172	50	86

⁵ Registration rates are at times over 100% given that the total registration rate includes late registrations (i.e. over 12 months)

<i>Regions</i>	<i># registration under 1 year</i>	<i># registration after one year</i>	<i>Total</i>	<i>Birth Rate (MOHSS 2011)</i>	<i>% Registered before the age of 1 year</i>	<i>Total % Registrati on rate</i>
TOTAL	40151	24322	64473	67625	59	95

Source: MHAI Regional Data (2011)

Table 20

Percentage of de jure children under five years whose births are registered

<i>Wealth Quintile</i>	<i>Percentage</i>
Lowest	46.2
Second	61.1
Middle	67.5
Fourth	82
Highest	91.5
Total	67

Source: DHS 2006

59. Number of Women and Children's Protection Units, number of cases dealt with by the Units, number of staff: There are 15 Woman and Child Protection Units (WACPU) dispersed within the 13 regions in Namibia. The WACPU has 102 staff members countrywide consisting of police officers and social workers, and they are currently dealing with 9,359 cases nationally (from 2000). These cases include all incidence of violence, exploitation or abuse perpetrated against children, women and/or men. The majority of cases are perpetrated against women, followed by children and there are a few isolated cases with men as the victims.

60. Number of cases prosecuted and adjudicated under the Prevention of Organised Crime Act: There are no cases that have been finalized under the POCA, but there are 10 cases pending in the High Court. These cases are not related to children, but the accused are adult men and women who are Namibians. Furthermore two cases of smuggling of immigrants have been finalized, and one more case is still pending.

61. Number of cases of child labour prosecuted and adjudicated: There were nine cases of child labour reported in 2009, and one was finalized or adjudicated. This means all nine case dockets were sent to court for prosecution, but eight were provisionally withdrawn awaiting instruction from the Prosecutor General's office. One case was finalized or adjudicated, which in this case resulted in a fine penalty.

Table 21

Reported (prosecuted) and finalized (adjudicated) child labour cases

	<i>Year</i>	<i>Reported</i>	<i>Finalised</i>
	2009	9	1
	2010	0	0
<i>Child labour cases</i>	2011	0	0

Source: MSS, WACPU 2011 Reports

62. Number of teachers trained to respond to special needs of children with disabilities: It was not possible to ascertain the number of teachers trained, though training of teachers

did take place. A manual for teachers and training manual for facilitators was developed to guide all education sector employees to identify and support orphans and vulnerable children. Every teacher in training at the University of Namibia (UNAM) is required to complete a module on Special Education and another on Inclusive Education. In 2010 there were 90 students, and in 2011 180 students enrolled in the semester module on inclusive education for second year students. There is an elective year module for fourth year students on inclusive education, and in 2010 there were 26 enrolled students and 9 in 2011. A group of recent graduates of the Basic Education Teachers Diploma in Windhoek were trained as Teacher Sign Language interpreters. UNAM offers a Master's Degree on Inclusive Education as of 2012, and five students have enrolled. The Ministry of Education is developing a School Register of Needs, which aims to understand the special needs in schools as a step towards improving service provision.

Reply to the issues raised in part III, paragraph 2, of the list of issues

63. The Committee on the Rights of the Child is encouraged to read the recently launched National Agenda for Children, which is a five-year framework (2012-2016) with five priority commitments for all sectors and stakeholders. These Commitments are considered as major priority areas affecting children in Namibia.
