



# General Assembly

Distr.: General  
10 November 2010

Original: English

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**Human Rights Council**  
**Working Group on the Universal Periodic Review**  
**Tenth session**  
Geneva, 24 January – 4 February 2011

**National report submitted in accordance with paragraph  
15 (a) of the annex to Human Rights Council resolution 5/1\***

**Namibia**

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\* The present document was not edited before being sent to the United Nations translation services.

## List of abbreviations

UN	UNITED NATIONS
NGO	NON GOVERNMENTAL ORGANISATIONS
CSO	CIVIL SOCIETY ORGANISATIONS
AU	AFRICAN UNION
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
PLAN	PEOPLE'S LIBERATION ARMY OF NAMIBIA
SWATF	SOUTH WEST AFRICA TERRITORIAL FORCE
SWAPO	SOUTH WEST AFRICA PEOPLE'S ORGANISATION
NDF	NAMIBIAN DEFENSE FORCE
HIV	HUMAN IMMUNE DEFICIENCY VIRUS
AIDS	ACQUIRED IMMUNE DEFICIENCY SYNDROME
LAC	LEGAL ASSISTANCE CENTRE
HRDC	HUMAN RIGHTS AND DOCUMENTATION CENTRE
IHL	INTERNATIONAL HUMANITARIAN LAW
UNAM	UNIVERSITY OF NAMIBIA
CERD	INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION
CAT	CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT
CEDAW	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
CRC	CONVENTION ON THE RIGHTS OF THE CHILD
ICCPR	INTERNATIONAL CONVENANT ON CIVIL AND POLITICAL RIGHTS
ICESCR	RIGHTS INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL
GDP	GROSS DOMESTIC PRODUCT
BIG	BASIC INCOME GRANT
ARV	ANTI RETRO VIRAL
LRDC	LAW REFORM AND DEVELOPMENT COMMISSION
Nbc	NAMIBIA BROADCASTING CORPORATION
NID	NAMIBIA INSTITUTE FOR DEMOCRACY
NSHR	NAMIBIA SOCIETY FOR HUMAN RIGHRS
WAD	WOMEN'S ACTION FOR DEVELOPMENT
ICRC	INTERNATIONAL COMMITTEE OF THE RED CROSS
UNHCR	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

IHL            INTERNATIONAL HUMANITARIAN LAW  
WIMSA        WORKING GROUP FOR INDIGENOUS MINORITIES IN SOUTHERN  
                 AFRICA

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## **I. Introduction**

1. The Republic of Namibia has the great honour to present the Country Report to the Human Rights Council's Universal Periodic Review Mechanism on 18 October 2010. This report is being submitted pursuant to operative paragraph 5(e) of the United Nations General Assembly Resolution 60/251 of 15 March 2006, which created the United Nations Human Rights Council and broadly provided a general framework for its fair, equitable and transparent operations.

2. Namibia gained independence on 21 March 1990, with a fully fledged constitutional democracy with an enshrined bill of rights, an independent judiciary, a prohibition of the imposition of the death penalty, and separation of powers.

## **II. Reporting methodology and consultation process**

3. In order to meet and respect her international obligations, Namibia established an Inter-Ministerial Committee on Human Rights, which consists of all Ministries the nature of whose mandate implicates human rights issues. The operations of the Committee are coordinated under the Ministry of Justice. This report was prepared and compiled by the Ministry of Justice based on information received from all Government Ministries, research information and reports from relevant non-governmental organizations (NGOs). A consultative meeting was held with representatives of civil society and NGOs to discuss the first draft of the report.

## **III. Brief background and basic facts of the country**

4. Namibia is a Member State of the United Nations (UN), the African Union (AU), and the Southern African Development Community (SADC), and the Commonwealth.

### **A. Country size and population**

5. With approximately 825,418 square kilometres or 317 827 square miles, it is the second least densely populated country in the world, after Mongolia with an average population density of 2, 1 people per square kilometre.

### **B. Land use**

6. About 1 % of the land is arable, 46 % is pasture, 22 % is woodland and 31 % is mainly desert. The country has about 6 500 commercial farms representing about 44% of the country area, while communal agricultural land on which 70% of the population depend for livelihood represent 43% of the land. In the central and southern parts of the country, Commercial farmers carry out intensive livestock farming of cattle and astrakhan sheep for export.

7. During the pre-colonial times, Namibia was inhabited by the San, Damara, and Nama and since the 14<sup>th</sup> century AD by immigrating Bantu who came from the central part of Africa. These Bantu groups now make up the so-called Caprivians, the Herero, the Kavango, and Ovambo.

8. The population of Namibia is fairly young and diverse with 40 % under the age of 15 years with a population growth rate of over 2, 6%, and over 11 ethnic groups. Two-

thirds of the population (67%) lives in the rural areas, and the majority relies on subsistence agriculture or cattle rearing. Food security for the population is a major challenge, given the country's vast desert and arid climate.

9. The 2001 Official Census results revealed that 942 572 of the population were females whereas 887 721 were males. 97% of residents were Namibians and only 3 % were non-Namibian. Namibia is still mainly a rural society and only 33 % live in the urban areas. 26 % of the total population was under 14 years and 52 % was between 15 and 59 years, 7 % of the population was 60+ years old. About 81 % of the population between 15+ years and older were classified as literate because they could read and write with understanding in any of the Namibian languages. In 2009 the population was estimated at 2, 088, 669 million with a population growth rate of 2.6 % per year. The National Housing and Population Census take place every ten years.

### C. Indigenous minority groups

10. Namibia is a signatory to the United Nations Declaration of the Rights of Indigenous Peoples. In addition to the Bantu majority, there are large groups of Khoisan (such as Nama and San), who are descendants of the original inhabitants of Southern Africa. There are approximately 27 000 San people (previously marginalized) in Namibia, but only about 2000 of them still follow a traditional way of life.

11. Since independence, the Government has resettled the San people to permanent locations and built houses for them across the country. In 2005, Cabinet approved the San Development Programme. The objective of the programme is to ensure that the San people are fully integrated in mainstream society and economy. A bank account for the San Development Programme was opened with the permission of the Ministry of Finance for budgeting purposes and contribution from donors. The following programmes were undertaken thus far since the inception of the programme:

- Resettlement Programme for San people. The Government has purchased farms, and allocated it to the San people. The Ministry of Land and Resettlement gave them livestock (cattle and goats), some farming implements and trained them in farming to produce food for self sustenance.
- Education for San children The Government launched the “back to school and stay at school for San children” programme and provides them with scholarships
- Literacy project for all the San people
- Early-Childhood Development Centres were established
- Employment opportunities. The National Government has given directives to all Ministries and Regional Governments to apply affirmative action principles in terms of the law in the employment of San people. Many of the Ministries including the Ministry of Defence, Safety and Security have relaxed requirements for employing San people in the Defence and Police Forces.
- With the assistance of NGO's, the Community Conservancy programme is one of the programmes established for the benefit of San people which has been more successful
- San Feeding Programme: Due to extreme poverty amongst the San, Government introduced feeding programmes for the San Communities on a regular basis.

12. Unlike the San, the Ovahimba people, a subgroup of the Ovahimba people (also previously marginalized) rear cattle and goats, also very nomadic searching for grazing of their livestock.

## **IV. Organs of State and its functions**

13. The Namibian Constitution establishes the country as a “sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all” with a multi-party system of government. It designates three branches of Government; the Executive, the Legislature and the Judiciary.

### **A. The Executive**

14. Government business is conducted through the Executive that is, the President and Cabinet whose members are drawn from Parliament. The Executive is responsible for the daily management of the affairs of State in the public interest. Article 27(2) of the Constitution provides for an Executive presidency, with the president as both Head of State and Head of Government. There are three layers of governments:

- The Central Government consists of the President and the Cabinet of Ministers
- The Regional Councils. Namibia has 13 regions, therefore it has 13 Regional Governments
- Local Governments. Namibia has 16 Municipalities, 17 Town Councils and 18 Village Councils.

### **B. Parliament**

15. Namibia has a bicameral system of Parliament consisting of a National Assembly, which has legislative power subject to the Constitution, and a National Council, which in terms of Articles 63(1) and 74(1)(a) of the constitution, is a House of Review.

### **C. The judiciary**

16. Article 78 of the Constitution establishes the judiciary as the third organ of State. It consists of the Supreme Court, High Court and the Lower Courts. The Constitution gives the courts, especially the Supreme Court the important function of maintaining checks and balances between the two other organs of State, and the protection of the rights of individuals as provided for in the Bill of Rights. Article 78 of the Constitution further protects the Judiciary in very broad unambiguous terms including its protection from interference by members of the Executive or Legislative branches of the State or any other person. Therefore the independence of the judiciary is constitutionally guaranteed.

## **V. Democracy and governance**

17. The Namibian Government through Constitutional statements has promoted a policy of national reconciliation which entails forgiveness of those who resisted freedom and independence. Since independence, Namibia has successfully completed the transition from white-minority-apartheid rule to Parliamentary (multiparty) democracy which has been maintained through periodic and regular elections. Local, regional and national elections are held regularly every 5 years. The Founding President Dr. Sam Nujoma served for 15 years, while the current President, His Excellency President Hifikepunye Pohamba took the reigns of power in 2005 very peacefully.

18. Namibia held Presidential and National Assembly elections on 27 and 28 November 2009. International and domestic observers characterized both elections as free and fair, reflecting the will of the electorate. Eight opposition parties won a total of 18 seats. However, some aggrieved opposition parties approached the High Court alleging that the Electoral Commission had violated the election laws during the counting process as a result of which they applied to the High Court for the recount alternatively to declare the election results null and void. The election petition is pending before court after their appeal to the Supreme Court against certain orders of the High Court was upheld. Meanwhile all the elected members including those opposition parties who had challenged the November election results have been sworn in and taken up their seats in Parliament.

## VI. Peace and security

19. Namibia experienced political stability, peace and tranquillity with one exceptional case of the attack at Katima Mulilo town by the Secessionists that took place in the north-eastern Caprivi Region in 1999, which was carried out by a few dozen armed people from one village in that region. This small group of people were misled by their exiled leader Mr. Mishake Muyongo, a former member of the Constituent Assembly, National Assembly and a leader of the then main opposition party from 1990 until 1998 when he was not re-elected as President of the opposition party. He has been given asylum in Denmark where he continues to organise and pursue his ideas to secede the Caprivi region from the rest of Namibia, which is illegal in terms of international law as well as the laws of Namibia.

### High treason case

20. Eight people were murdered during the insurrection. After the failed separatist attack a number of persons were arrested. At least 3 separate trials ensued from the events of the 2<sup>nd</sup> of August 1999. The accused were indicted *inter alia* for treason, sedition, murder and firearms offences. All the suspects have been afforded legal representation at the expense of the Namibian Government.

21. The main treason trial is ongoing in Windhoek in which there are 113 accused persons. The initial number of accused persons when the trial commenced stood at 132. From that figure, charges were withdrawn against five. Several died in custody during the course of the trial from natural causes. A second treason trial is already completed in which there were 12 accused persons. From that number 10 were found guilty and sentenced to lengthy terms of imprisonment and two were acquitted on all counts.

22. Another treason trial stemming from the events of 2<sup>nd</sup> of August 1999 is currently under way in Oshakati High Court. It has been set down from the 21 September to 22 October 2010 for hearing. Since the start of that trial, the defence, in their cross examination of prosecution witnesses has been placing heavy reliance on voluminous records of the main treason trial as well as the already concluded treason trial. This cross examination of witness of evidence in order to test their credibility will take time and ultimately cause further delay in the finalisation of the trial. The right to challenge a witness under cross examination is an integral part of the Namibian legal system and cannot be curtailed. Unfortunately, it is this type of lengthy cross examination by defence lawyers that sometimes contributes to delays in the finalization of trials.

23. A number of factors are to be attributed to the delay in the finalisation of the treason trials. At one stage a rise in the number of deaths among state witnesses was experienced. Coupled with that, a team of prosecutors was involved in a motor vehicle accident in which

one Prosecutor died and two others critically injured. They had to spend months on end in intensive care and many more recuperating.

24. During the course of the trial, the State intended to tender documents, wherein accused persons made some confessions with regard to the charges they are facing. This was objected to by the defence on the ground that these confessions were obtained in an unlawful manner. The Court then ordered that the trial proceed by way of a trial-within-a-trial in order to determine the admissibility of these confessions. The Court held that the confessions were inadmissible. The prosecution then appealed against that order of the Court to the Supreme Court. The Supreme Court dismissed the appeal expressing its concern about the delay in the completion of the trial.

## **VII. Brief background of Namibia's human rights records**

25. The Namibian people suffered one of the most horrific violations of human rights for more than 100 years during the apartheid colonial rule of the German and South African regime. The People of Namibia were segregated in all sort of life according to their tribes and skin colour. The discrimination was based on ethnic and tribal division as well as social, political and economic discrimination. As a result, the people were denied their rights, and their traditional way of life was disrupted during those many years.

26. Because of the painful history of human rights violations, the Constitution incorporated the Bill of Rights which is consistent with the Universal Declaration of Human Rights. Thus, the Namibian Constitution in the preamble embraces and emphasises the principles of equality and inherent dignity of all members of the human race.

## **VIII. Legal and institutional framework for the protection of human rights**

### **A. The Constitution**

27. The Namibian Constitution is a product of a struggle for sovereignty and human rights; it came into force on the country's independence as the supreme law of the country and, therefore, the Constitution is committed to the preservation of human rights and freedoms. This is reflected in the Article 1, which states that Namibia is "*a...sovereign, secular, democratic and unitary state founded upon the principle of democracy, the rule of law and justice for all*". The Bill of Rights protects most of the human rights referred to in the various international human rights instruments. For example, the right to life is protected. Flowing from this, the death penalty is totally abolished in Namibia.

### **B. The role of the judiciary in protection of human rights**

28. Because Namibia has a justiciable Bill of Rights any person who alleges that his or her human rights has been violated or are likely to be violated may seek redress in the High Court (Article 25(2) of the Constitution). If he or she is dissatisfied with the decision or judgement of the High Court, he or she may appeal to the Supreme Court. The Supreme Court has appellate jurisdiction.

29. Article 25(2) read together with Article 18 of the Constitution provides that-

*...aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a*

*competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.*

30. Namibia has a strong judiciary which has actively defended the constitutional rights of its citizens. The courts have handed down a number of cases upholding the rights of individuals under the Bill of Rights, including the rights of persons with HIV/AIDS and the right of accused persons to legal representation to be provided by the State.

### **C. Judicial precedence of human rights cases**

31. Government of the Republic of Namibia and Others v/s Mwilima and all the Other Accused in the Treason Trail 2002 NR 235 (SC), the accused (applicants) were all awaiting trial prisoners in a treason trial. The director of Legal Aid disapproved their application for legal aid arguing that there were no funds available to grant them legal aid. The suspects launched an application in the High Court for an order directing the State that such legal aid should be granted. It was argued on behalf of the Applicants that according to the Constitution the State has an obligation to provide legal aid to the Applicants in order for them to have fair trial as provided in Article 12 of the Constitution. The Government on the other hand argued that legal aid was provided in Article 95 of the Constitution as guiding principles of State policies, and that such legal aid is only subject to availability of resources, therefore it was not enforceable. The High Court ruled in favour of the accused/applicants, and ordered that the Director of Legal Aid should provide such legal aid. The State appealed to the Supreme Court, and the Supreme Court confirmed the ruling of the High Court.

32. Kauesa v/s Minister of Home Affairs and Others (1995). In this case, the Supreme Court had to rule on the unconstitutionality of Regulation 58 (32) of the Police Force deemed to have been made under the Police Act, which stipulated and prohibited police officers from commenting unfavourably in public on the administration of the Namibian police force or any other government department and rendered such conduct an offence. The officer in question appeared on national television and made certain unfavourable remarks about the affirmative action process being employed to restructure the Namibian Police Force. He was subsequently charged with contravening the said regulations. He challenged the said Regulation, arguing that such Regulation will continue to restrict his right as a citizen to freedom of expression enshrined under the Namibian Constitution. The Supreme Court ruled in his favour and stated that “Regulation 58 (38) was arbitrary and unfair and unconstitutional. In order to live in and maintain a democratic State the citizens must be free to speak, criticise and praise where praise is due”.

33. The LAC filed a lawsuit against the Government on behalf of 16 HIV-positive women who claimed that they were sterilized without their informed consent at state health facilities, after being told the procedure was a routine treatment for HIV/AIDS. The LAC argues that the practice discriminates against persons living with HIV and interfered with their rights to found a family, dignity and privacy as provided for in the Namibian Constitution. The case is still before court. The Government has no policy regarding sterilization of persons who are infected by HIV/AIDS.

### **D. The Ombudsman**

34. The Constitution and the Ombudsman Act, Act No 7 of 1990 spell out the key mandate areas and powers of the Ombudsman in Namibia with regard to human rights

violations, which includes the protection, promotion and enhancement of respect for human rights in the country.

35. The Ombudsman established a Human Rights Committee which is composed of civil society and nongovernmental organizations to put special emphasis on gender based violence.

### **E. Ministry of justice**

36. The Ministry of Justice is responsible for the promotion, protection and compliance of human rights on behalf of the Government. It coordinates the Inter-Ministerial Committee on Human Rights and International Humanitarian Law (IHL), and drafts all the reports of the various human rights instruments. To this end it ensures implementation of human rights programmes, and administration of justice. The Attorney General scrutinizes all the bills, (draft legislation), to ensure that Bills promote and do not violate human rights.

37. The Ministry has in collaboration with the University of Namibia set up the Human Rights and Documentation Centre (HRDC). The Centre undertakes outreach activities and assists with queries on human rights issues. The programmes for Law Reform and Development Commission and Legislative Drafting in the Ministry of Justice provide research and support in the creation of new laws to remove discriminatory statutes of the apartheid era as well as drafting new legislation to conform to the international standards and norms.

### **F. The police force**

38. Section 6 of the Police Amendment Act provides that the functions of the Police Force shall be:

- Preservation of the internal security of Namibia
- Maintenance of law and order
- Investigation of any offence or alleged offence
- Prevention of crime
- Protection of life and property.

39. Every year members of the Police Force receive human rights training designed by a local NGO, the Legal Assistance Centre. The Faculty of Law at UNAM also train senior members in the Police Force and Namibia Defence Forces (NDF) members in human rights and the criminal justice system. Some Officers continue to attend training programmes with human rights components, including human trafficking at the international law Enforcement Academy in Gaborone, Botswana.

## **IX. Namibian legislation supporting human rights instruments**

40. The civil and political rights are enshrined in the Namibian Constitution under the Bill of Rights, and protect certain economic, social and cultural rights. In order to give effect to the constitutional provisions, parliament has passed amongst others the following legislation:

- The Ombudsman Act No 7 of 1990

- Local Authorities Act No 6 of 1992
- National Pension Act No 10 of 1992
- Agricultural (Commercial ) Reform Act No 6 of 1995
- Medical Aid Fund Act No 23 of 1995
- Co-operative Act No 23 of 1996
- War Veterans Subvention Act No 16 of 1999
- The Racial Discrimination Prohibition Act No 26 of 1990,
- Racial Discrimination Amendment Act No 26 of 1998.
- Affirmative Action (Employment) Act No 29 of 1998
- Married Persons Equality Act No 1 of 1996
- Combating of Rape Act No 8 of 2000
- Combating of Domestic Violence Act No 4 of 2003
- Traditional Authorities Act No 25 of 2000
- Communal Land Reform Act No 5 of 2002
- Maintenance Act No 9 of 2003
- Children Status Act No 6 of 2006
- Labour Act No 11 of 2007
- Social Security Act No 34 of 1994
- Education Act No 16 of 2001
- Community Courts Act No 10 of 2003
- The Police Act No 19 of 1990

## **X. International human rights instruments**

41. Namibia has ratified or acceded to the following major international and regional human rights instruments.

- International covenant on Economic, Social and Cultural Rights (ICESCR), on 28 February 1995
- International covenant on civil and political rights (ICCPR), on 28 February 1995
- Optional protocol to the ICCPR, on 28 February 1995
- 2<sup>nd</sup> Optional protocol to the ICCPR, on 28 February 1995
- International convention on the Elimination of All Forms of Racial Discrimination (CERD), on 11 November 1982
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), on 28 November 1994
- International Convention on the Suppression and Punishment of the Crime of Apartheid, acceded on 11 November 1982

- Convention on the Prevention and Punishment of Crimes of Genocide, acceded on 28 November 1994
- Convention Relating to the Status of Refugees, acceded on 17 February 1995
- Protocol relating to the status of Refugees, on 17 February 1995
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), on 23 November 1992
- Optional protocol to the Convention on the Elimination of Discrimination against Women, on 22 December 2000
- Convention on the Rights of the Child (CRC), on 30 October 1990
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 16 April 2002
- Convention on the Rights of person with Disabilities,
- Optional protocol to the Convention on the Rights of persons with Disabilities,
- African Charter on Human and People's Rights, on 30 July 1992
- Protocol to the African Charter for Human and People's Rights on the Rights of Women in Africa,
- African Children's Charter, 23 July 2004
- OAU Convention governing the specific aspects of refugee problems in African, acceded on 2 September 1992 and
- African Youth Charter, on 31 May 2009.

42. Namibia became a State party to the 1949 Geneva Convention I-IV in 1991 shortly after independence, and on 17 June 1994, Namibia became a member state to both the 1977 Geneva Protocol I and II.

43. Namibia is also a State party to the 1997 Ottawa Convention on the Prohibition of Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction on 21 September 1998. Namibia became a State party to the Rome Statute of the International Criminal Court on 26 June 2002. Namibia is also a State party to the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in armed conflicts on 16 April 2002.

44. In terms of Article 144 of the Namibian Constitution, Namibia has adopted monist approach in reception of international law into the national legal system. Thus, all human rights instruments ratified or acceded to by Namibia are part and parcel of the domestic law and should apply as such, unless they are in conflict with an existing Act of Parliament, or where they are not in conformity with the Constitution. Namibia is attentive that there is a need for parliament to enact legislations to give effect to some of these instruments.

## **XI. Namibia's reporting obligations**

45. Namibia as a State Party to the major human rights instruments has submitted the following reports to the relevant treaty bodies:

(a) In 2007, the initial and first periodic report on International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

(b) In 2004, the second and third periodic report on Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW).

(c) In 2006, the periodic report on International Covenant on Civil and Political Rights (ICCPR).

(d) In 1997, the initial report on International Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment (CAT).

(e) In 2009, the second periodic report on the Convention on the Rights of the Child (CRC).

(f) In 2010, the initial, first, and second periodic report on the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

(g) In 2001, the initial and first periodic report on the African Charter on human and People's Rights.

(h) In 2010, the third, fourth and fifth periodic report on African Charter on human and People's Rights.

46. Namibia is attentive of its international obligations to submit the outstanding periodic reports. The delay in submitting these reports on time was due to insufficient human and material resources and inappropriate internal organizational framework for multi-sectoral coordination of human rights issues. The government is instituting measures to improve the situation.

## **XII. The economy and infrastructures**

47. Namibia is classified as a middle-income country with an average per capita income of US\$1,800 per annum. The country's economy is tied closely to South Africa's due to our shared history. Namibia mainly exports minerals, fish and fish products, meat and animal products. GDP in 2006 was N\$ 45.87 billion (US\$ 6.1 billion). GDP (2002-2006) growth was 4.5 % average. GDP per capita 2005 was N\$ 24, 064 (US\$ 3, 200). Namibia is among the countries in the world that spend the highest share of GDP on public expenditures such as education and health sector.

48. According to the latest figures released by the Ministry of Labour and Social Welfare, it is estimated that a total of 36, 7% of Namibia's total potential work force is unemployed when the strict definition of unemployment is applied. However, when the broad definition of unemployment is applied, the unemployment rate is 51, 2% of the total potential work force.

49. Namibia's per capita income might be among the highest in sub-Saharan Africa, but her skewed income distribution is one the highest in the world. Namibia's Gini coefficient of 0.60 is the highest in the world because of the social and economic inequalities inherited from the apartheid colonial regime, and due in part to the fact that there is an urban economy and more a rural cashless economy. The inequality figures thus take into account people who do not actually rely on formal economy for their survival. It is estimated that 27, 6% of the population is poor, including 13, 8% who are severely poor. The Government bases its economic and social policies on a long-term plan called Vision 2030, through which Namibia aspires to become an industrialised nation by the year 2030.

### **XIII. The right to health care**

50. The Ministry of Health and Social Services is responsible for healthcare. At independence the country inherited a fragmented health system based on racial segregation, and it was marked by a concentration of the infrastructure and services in urban areas. The Ministry of Health and Social Services has received relatively high share of funds from the national budget since independence. This financial resources allocated to the Ministry have contributed to a number of health sector reforms, expanding the availability of health facilities in rural areas, which has taken place in the area of Primary Health Care. A significant increase in the coverage of various services as well as the general improvement of health care services in the country has been experienced.

51. As regards to the right to physical and mental health of its citizens. The Government of Namibia has a national health policy. A Comprehensive Primary Health Care Programme has been implemented since independence in all health districts in the country. The primary health care approach of the World Health Organisation has been adopted as part of Namibia's health policy. The system inherited at independence has been reoriented and the health districts have been strengthened.

52. There are State hospitals in all major towns of the country. In smaller towns villages and rural settlements well-equipped and staffed clinics and healthcare centres which are all operated by the Ministry of Health.

53. Currently there are 1,150 outreach points, 265 clinics, 44 health centres, 35 district hospitals, 3 intermediate hospitals and 1 national referral hospital with a total of 6 756 hospital beds in Namibia. According the Ministry of Health's Human Resource Development report of 2007/08 Namibia has one doctor per 9,743 persons In 2005, Namibia had one doctor per 3650 people, the situation has not changed much ever since. The qualifications of medical practitioners and medical care in Namibia are on par with international standards of most first world countries. Advanced medical facilities and about 80 % of the country's medical specialists are based in Windhoek.

54. The Demographic and Health Survey of 2006 revealed that 30 % of the households in Namibia are less than 1 kilometre to the nearest clinic or hospital and 34 % is between 2 and 5 kilometres. However, 7 % of the population still travel more than 40 kilometres to the nearest clinic or hospital. In Urban areas distances are shorter than in rural areas. Khomas, Erongo, and Oshana are the three regions which are less than 5 kilometres to a clinic or hospital, whereas some places in the Ohangwena, Omaheke, and Oshikoto regions are more than 6 kilometres to a health facility. The most readily available services are: immunisation, education on HIV/AIDS, including the use of condoms and reproductive health.

55. Most women deliver babies in health facilities countrywide. This service is also mostly provided in all hospitals and health centres. Although the health policy calls for this service to be provided also in clinics, at the moment only emergency deliveries are provided for at clinics. This is due to limited personnel and infrastructures, as well as the required delivery supply at the clinics.

### **XIV. HIV/AIDS**

56. Namibia faces a threat to human welfare and the economy because of the HIV/AIDS pandemic which is now the leading causes of death in the country. Namibia is among the top ten affected nations in the world. In a survey carried out by the Ministry of Health during the year 2005, 22 % of the pregnant women were found to be HIV positive. In our national effort to combat HIV/AIDS, the government launched a HIV/AIDS Strategic Plan Programme in 1999, and in 2009 the Government launched a HIV/AIDS Policy that calls

on all stakeholders to contribute in the fight against HIV/AIDS. A considerably high budget is allocated for the fight against HIV/AIDS. The national HIV/AIDS prevalence rate declined from 19,9 % in 2006 to 16,8 % in 2010. ARV is readily available at all hospitals and it is provided to citizens and the refugees in the country. There are 75 681 people who are on ARV treatment as at till March 2010.

## **XV. The right to education**

57. Article 20 of the Namibian Constitution provides that all persons in Namibia shall have the right to education. It further provides that Primary education shall be compulsory and shall be provided free of charge at State schools. Education is compulsory for 10 years between the ages of 6 and 16. Primary education is for seven years, and secondary school last for five years. In 2001 Parliament passed the Education Act, (Act 16 of 2001) to give effect to the Constitution and other International Human Rights Instruments. The Act allows for schools to establish a school development fund which can be levied at an amount of N\$ 500-00 (US\$ 68.50) and N\$ 250-00 (US\$ 34.24) for secondary and Primary schools respectively. The Act further provides that no child should be turned away as a result of non payment of school fees. There are however a number of reports that some schools don't adhere and comply with the law. Many children are denied access to certain schools because they cannot afford to pay school fees.

58. Soon after independence in 1990, schools in Namibia have all been desegregated in line with the Constitution and the Education Act. The different classification of schools belonging to different racial groups has all disappeared. All Government schools are now open to all Namibians regardless of race, colour, religion or ethnic background. The Ministry of Education established the Directorate of Adult and Continuing Education to cater for the educational needs of adults and out of school youths.

59. There are 1 672 schools in Namibia, of which 1571 are State schools and 101 are private schools. 1039 are primary schools of which 986 are State schools and 53 are private. There are about 20 333 teachers in the country for about 577 290 learners (male 53, 8% and female 50, 7%) who enrolled in schools in 2010, of which 407 000 is the enrolment at primary schools.

60. The University of Namibia (UNAM) and Polytechnic of Namibia provide tertiary education. UNAM is amongst the first top 20 best African Universities. Both institutions have established centres in all major towns. In addition there are four Vocational Training centres and two Agricultural colleges throughout the country. Learners at Government secondary schools as well as the students at tertiary institutions have the right to elect their Student Representative Councils.

61. Namibia spends more on education per head than most developing countries, but commensurate educational outcomes have yet to be achieved. Various studies have shown the importance of human resource capital for the future prosperity of the country, especially as knowledge based industry comes to be more dominant as the country move towards Vision 2030.

62. There are public schools in all the major towns throughout the country, with several private operated schools in the main centres of the country. About 80 % of the population aged 15 years and older is literate, and 65 % of the people aged 6 to 24 years are enrolled in schools. About 42 % of the people aged 15 years and older have completed their primary education while 15 % have completed secondary education. As of 1999, public expenditure on education had been estimated at 8 % of the GDP.

## **XVI. Religious and socio-cultural rights**

63. Namibia is a secular state in terms of Article 1 of the Constitution, and freedom of religion was adopted through the Bill of Fundamental Rights. It is estimated that about 90 % of the population are Christian whilst 10 % practice indigenous or other religions.

64. Namibia is a country with a rich culture and traditions. The Government of Namibia does not maintain records on the ethnicity or race of its citizens. Cultural expression reflects the many different groups that co-exist in the country. Namibian cultural groups perform traditional African dances to rhythmic drum beats. Cultural development is further promoted by institutions such as the National and Mobile Museum, Museum Association of Namibia, National Theatre of Namibia, College for the Arts and the Arts Department at UNAM. Many of these groups are invited and travel all over the world to participate in international cultural events and performances.

65. Parliament has enacted a law, the Traditional Authorities Act, Act 25 of 2000 for all indigenous groups to give recognitions to traditional leaders. The Government has recognised more than 43 Traditional Authorities in terms of the Act, and these include also the five San ethnic groups.

## **XVII. Marriages and family**

66. Article 14 of the Namibian Constitution provide further that marriage shall be entered into only with the free and full consent of the intending spouses and between a man and woman of full age without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status.

67. Civil Marriages in Namibia are regulated by the Married Persons Equality Act, Act 1 of 1996. Both men and women of 18 years and older, have the right and are allowed by law to marry and found a family. The most important aspect of the Act is the abolishment of the common law rule, which means that husbands have no marital power over their wives. The effect of the changes was that married women became fully emancipated; they have the rights to enter into contractual agreements, own property, acts as directors of companies and bind themselves as surety without the consent of their husbands.

68. 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 lately (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 never enjoyed legal recognition prior to Independence in 1990, primarily because of their polygamous nature. Currently the LRDC has drafted a piece of legislation on recognition of customary law marriages, for public and stakeholders consultation.

## **XVIII. Affirmative action programmes and gender equality**

69. Namibian women's struggle for gender equality is not only played at the social and legal levels, but also in the political arena. The Namibian Constitution prohibits gender-based discrimination. Women's civil liberties and freedom of movement is guaranteed by the Constitution and married women can travel without their husband's permission. Women's physical integrity is also well protected under Namibian laws and there is no restriction on women's freedom of dress. Namibia acceded to CEDAW in 1992 and ratified

the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women in 2000.

70. Namibia made progress in the promotion of the empowerment of women, socially and legally notably in the increased number of women in positions of power. There is overwhelming constitutional, legislative and Government policies supporting gender equality. Indeed, a number of Government policies have been established to promote the economic advancement of women in an environment where women have historically been at a disadvantage.

71. Namibian women have the same ownership rights as men, but are obstructed by tradition. Women are particularly disadvantaged as regards access to land. The land reform law of 2002 placed all land under State ownership. Local customary authorities allocate the rights to use this land to individuals and, in theory, men and women have equal access to community plots. However, women's rights are rarely recognized by tribal chiefs. In addition, many single women with children lack the technical resources to farm the land allocated to them.

72. The Namibian Constitution states that all citizens have the right to acquire and dispose of property. The Married Persons Equality Act grants men and women equal access to property other than land, and allows either spouse to exercise this right without the partner's consent. Discrimination persists in customary marriages, which are not legally required to be registered under customary law and husbands have the power to claim control over their wives' property.

73. There is no legal discrimination against Namibian women in relation to access to bank loans. The Married Persons Equality Act specifies that a partner's consent is not required to obtain loans.

74. Since independence in 1990, there has been an increase in the number of women in both houses of parliament (the National Council and the National Assembly) from 20% to 27%. It is also important to mention that during 2005/2009, the deputy Prime Minister and deputy Speakers for both houses of parliament were women. In a total number of 42 Ministers and deputy ministers, 5 had been female Ministers and 5 deputy female deputy ministers.

75. There have been greater improvements at regional and local authority political levels. Out of 13 regional governors for all the 13 regions, 9 are men and 3 are female governors.

76. The female-male ratio increased from 43 to 57% in the 2004 elections and there are now 11 local authorities in which women hold a majority of seats, compared with only four in the 1992 elections. There is also no local authority without women councilors. Representation by women in local authority councils is far higher than it is in parliament, the cabinet or the judiciary or – especially – in regional councils, where women hold only eight seats out of the total of 95.

77. Article 95 of the Namibian Constitution provides that:

*“...enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the government shall ensure the implementation for the principle of non-discrimination in remuneration of men and women; further, the government shall seek, through appropriate legislation, to provide maternity and related benefits for women.”*

78. All affirmative action legislations passed since 1992 requires that the number of women in decision-making positions should be increased. It had some success in both parliament and regional and local councils. However, it was not until the 1998 local council

elections that affirmative action measures were strengthened, with a requirement that party lists should include a minimum of three women on councils with 10 members or fewer and at least five women on larger councils.

79. The following legislation had been passed by parliament to create an enabling environment for gender equality:

- Local Authorities Act No 6 of 1992, this law contains an affirmative action provision which requires that all political party lists participating in the local authority elections must include a specified number of woman candidates, depending on the size of the council (three women for a council of 10, and five women for a larger council)
- Married Persons Equality Act No 1 of 1996, this law abolishes marital power, which previously gave husbands in civil marriage all the decision making powers. It says that spouses must agree on all important financial transaction involving their joint property.
- Affirmative Action (Employment) Act No 29 of 1998, the purpose of this law is to achieve equal opportunity in employment in accordance with the provisions of the Constitution. The Act aims to redress the disadvantages arising from past discriminatory laws and practices through appropriate affirmative action plan for three designated groups; such as persons from racially disadvantaged groups, women, and persons with disabilities.
- Combating of Rape Act No 8 of 2000, the Act provides an extensive definition of rape that focuses on acts of coercion (force) used by the accused. It prescribes stiff minimum sentences for rape. It gives the complainant (the rape victim) the right to participate in bail proceedings, and imposes bail conditions that will help to protect the rape victim. The Act requires that rape cases must be heard in closed court and prohibits publications of the information which could reveal the identity of the rape victim.
- Traditional Authorities Act No 25 of 2000, the Act places a duty on traditional authorities to promote affirmative action amongst the members of that community, particularly by promoting women to positions of leadership.
- Communal land Reform Act No 5 of 2002, the Act governs the allocation of communal land. It provides that widows have a right to remain on communal land allocated to their late husbands, even if they remarry. It further provides that women must be presented on the communal land Boards to monitor the implementation of the Act.
- Combating of Domestic Violence Act No 4 of 2003, the Act gives an extensive definition of domestic violence, including physical, sexual, economic, verbal, emotional and psychological, intimidation and harassment. It also defines who is in a domestic relationship. It provides for the issuing of protection orders and police warnings in domestic violence matters. It also has provisions which should give added protection to complainants that lay criminal charges against their abusers. The Act gives police specific duties in domestic violence incidents, including the duty to help complainants get access to medical treatment and collect their personal belongings.
- Maintenance Act No 9 of 2003, the Act stipulates that all parents have a legal duty to maintain their children. Both parents share responsibility for the support of their children, regardless of whether the children are born inside or outside of a marriage and regardless of any contradictory rules under customary laws. The Act sets out procedures for holding maintenance enquiries and for enforcing maintenance orders.

- Labour Act No 11 of 2007, the replaces the 1992 Act, it makes more generous provisions for maternity benefits than the old Act. It outlaws discrimination in workplaces on the basis of pregnancy and HIV/AIDS status for the first time, and it prohibits sexual harassment and includes a more clear definition of sexual harassment.
- The Prevention of Organized Crime Act No 29 of 2004, the Act specifically criminalizes trafficking in persons, slavery, kidnapping, and forced labour, including forced prostitution, child labour, and alien smuggling. However, there are no reports that persons were trafficked to, from, and within the country.

## **XIX. Violence against women and children**

80. Women's physical integrity is reasonably well protected by Namibian legislation. However, violence against women is a serious challenge. Rape and domestic violence are widespread. In 2003, the Namibian Government responded to the escalating incidence of sexual violence by adopting anti-rape legislation that broadens the definition of rape and allows the perpetrators of spousal rape to be punished. Sexual relations with minors under 14 are considered as rape and are punishable by prison sentences ranging from 15 years to life imprisonment. In most rape cases, victims know the perpetrator and rape is often committed by a family member or friend. Rape victims seldom press charges because families in Namibia prefer to settle matters privately. Because of strong social pressure, complaints are rarely brought against perpetrators of spousal rape.

81. Numerous cases of rape were prosecuted during the past years, and the courts enforced rape penalties, which provide for sentences of between five and 45 years' imprisonment for convicted rapists. According to police statistics for 2008, 11,611 cases of gender-based violence were reported, 940 of which involved rape cases. A number of factors continued to hamper rape prosecutions, including lack of police transport, poor communication between police stations, lack of expertise in dealing with child rape complainants, and the withdrawal of cases by rape complainants after they filed charges.

82. There are 15 women and child protection units in the country staffed with police officers trained to assist victims of sexual assault in Namibia. Over the past years the People's Education, Assistance, and Counseling for Empowerment Center and other NGOs continued to provide training to these units. In some magistrates' courts, there are special courtrooms to protect vulnerable witnesses from open testimony. The courtrooms featured a cubicle made of one-way glass and child-friendly waiting rooms. The Government recently launched the "Zero Tolerance Campaign against Gender Based Violence, Including Human Trafficking," to raise public awareness and highlight ways in which the public could help to address the problem.

83. During 2007 and 2008, the Ministry of Gender Equality and Child Welfare commissioned a survey on gender-based violence in the country. The findings reveals that 40, 5% of the female respondents had experienced physical gender-based violence and 36, 4% of all children had been subjected to physical violence.

## **XX. Trafficking in persons**

84. Namibia has no specific legislation on trafficking in persons. The Government is in the process of enacting legislation on Human Trafficking. Parliament passed the Prevention of Organized Crime Act No 29 of 2004, which criminalizes trafficking in persons, slavery, kidnapping, and forced labour, including forced prostitution, child labour, and aliens smuggling. According to the assessment which was conducted by the Ministry of

Gender Equality and Child Welfare in 2009, two cases of human trafficking were identified. The case of a mother at the coastal town of Walvisbay was reported. The mother is said to have used her teenage daughter who was living in the north for sexual exploitation through forced prostitution. Another case involves a Zambian national trafficking Zambian boys into Namibia for farm work exploitation. These cases were reported to the police and the perpetrators were arrested.

## **XXI. Role and independence of media, NGO's and civil society**

### **A. Media**

85. A significant level of media freedom has existed in Namibia since independence. It is one of the more media-friendly countries in Africa. Freedom of speech, expression and freedom of the press and other media is guaranteed under Article 21 of the Namibian Constitution and on the whole this is respected by the Government. Parliament has enacted legislation like the Broadcasting Act, Act No 9 of 1991 and the Namibia Communications Commission Act No 4 of 1992 to provide the legal framework to govern and creates a liberal environment of the media in the country.

86. One notable case reported in the local news papers concerns a freelance journalist, Mr. John Grobler who was allegedly assaulted by two men in a public bar. It was further alleged that he was assaulted because he usually report negatively on the ruling party (SWAPO). The matter was reported to the police and it is still with the Prosecutor-General for decision making.

87. Namibia Broadcasting Corporation (nbc), which is the only Public broadcaster, has 8 radio services and one television channel. It broadcasts in 6 languages from Windhoek and almost in all the indigenous languages from the transmitters in their respective areas. There is one privately owned television channel (One Africa), Namibia's most popular commercial free-to air TV station. There are around 20 private and community radio stations.

88. The nbc and the private press give coverage to opposition parties, even on views very critical of the Government. Over the years the media has continued to operate in an environment essentially free of Government or ruling party interference.

89. Namibia does not have any legislation that provide for an express right of Citizens for access to information or to gather information. However, it is within the interests of our democracy, legal certainty and parliamentary accountability that legislation is readily available to all citizens.

90. In Namibia laws are published in the Government Gazette upon promulgation, and members of the public may obtain a copy at the Ministry of Justice or parliament for at a minimum fee. Furthermore, there is no Government restriction on access to the internet in the country. There are over 100 000 internet users in the country, about 5 % of the population. In 2009, the Editor's Forum of media in Namibia established the office of the Media Ombudsman as a self-regulatory mechanism.

91. The media, particularly the Community radio stations have contributed significantly to the public availability of information and are used as a tool to communicating with family and relatives who live in other towns and in the rural areas. The newspapers are also seen as valuable in the fight against corruption and sensitize citizens on human rights issues.

## **B. Civil society and other NGO's**

92. Namibia is a vibrant democracy where a host of Civil Society Organizations, political parties, donor agencies, and NGO's are active. In the last quarter of 2005, the government took the first step towards realizing these objectives when the cabinet adopted a partnership policy between the government and CSOs. The objective was to promote active citizenship through the demonstration of greater government commitment to civic participation. The policy document states that the realization of this objective requires: an improved environment for partnership; closing the gap between the government and the people; strengthening civil capacity; and collective responses to existing development challenges and opportunities. This partnership formalise the roles and functions of the civil society sector in the national governance and development processes.

93. Civil Society organizations such as the Working Group of Indigenous Minorities in Southern Africa (WIMSA), the Omaheke San Trust, Namibia Network of AIDS Service Organisations, Sister Namibia and Women's Action for Development (WAD) have worked in diverse field and had taken up human rights issues of citizens very seriously. The Housing Federation (previously known as Shack Dwellers's Association) had campaigned and worked in promoting access to affordable housing in urban and in rural areas. The Basic Income Coalition (BIG) is a coalition of NGO's that advocate for the state to pay a monthly cash grant of N\$ 100-00 (US\$ 13.60) per month to every Namibian citizen, regardless of age or income. The BIG launched its own pilot project in Omitara village, which is said to be one of the most impoverished settlements in the country.

94. The Legal Assistance Centre (LAC) is a public-interest law centre; it works mainly on civil and political rights, and has a great success in promoting and protecting of these rights. It also assists the government in the area of Law reform and particularly provides input to legislation that focuses on gender issues and human rights.

95. The NamRights Inc (formerly known as National Society for Human Rights (NSHR) is another human rights organization which is vocal and critical against the Government since it was founded in 1989. Some of its objectives are to promote accountability, accessibility and transparency in public administration, and to promote representative and decentralized political power based on active and full public participation.

## **XXII. Practical enjoyment of individual human rights**

### **A. Civil and political rights**

96. Namibia became a State party to the ICCPR in 1995. Chapter 3 of the Namibian Constitution which contains the Bill of Rights incorporate all the fundamental human rights and freedoms contains in the ICCPR. Article 23 of the Constitution spells out a number of rights which cannot be derogated from or suspended even if a state of emergency has been declared: namely the right to life, fair trial, torture and other cruel or inhuman treatments or punishment. The Constitution explicitly abolishes death penalty. By virtue of Article 144 of the Namibian Constitution, the Covenant is part of Namibian municipal laws. The effect of Article 144 is that the rights and freedoms provided in the ICCPR are enforceable within Namibia by the judiciary and quasi-judicial bodies. Undoubtedly, the Namibian Bill of Rights is justiciable and in it fully complies with the legal obligations as spelt out in Article 2 (3) of the ICCPR which provides that victims of human rights violations should be awarded remedies. The Government respect, protect and had fulfilled the court rulings relating the rights contained in the ICCPR. There are no political prisoners and detainees in

Namibia, and there were no reports of political motivated killings or disappearances of persons in the country. Namibia's last periodic report was submitted in 2006 to the relevant treaty body.

## **B. Economic, social and cultural rights**

97. The economic, social and cultural rights as embodied in the ICESCR are not justiciable which means that they are not enshrined in the Bill of Rights under the Namibian Constitution. Nevertheless, the Constitution provides that the government is obliged to promote and maintain the welfare and good standard of living of its people through the adaptation of appropriate policies. In this regard, parliament passed the legislations which we had mentioned in paragraph which we have mentioned above, respectively in housing, education, labour, social security, social grant, pension including the National Planning Commission Act No 15 of 1994.

## **C. Access to drinking water**

98. In Namibia the main sources of drinking water are piped water, boreholes, protected wells, stagnant water and flowing water/rivers. The Namibia Household Income and Expenditure Survey of 2003/2004 revealed that 65 % of the households in the country have a distance of less than 1 kilometre to their source of drinking water. Small percentages of households, 20 and 8 % have up to or up to 2 kilometres respectively in distance between household and the source of drinking water. Out of all households 7 % have a distance have a distance of 3 kilometres or more. Among urban households 96 per cent have a distance of less than 1 kilometre to a source of drinking water.

99. In the regions of Khomas, Erongo and Otjozondjupa 97, 95 and 91 % of households respectively have a distance of less than 1 kilometre between the household and its source of drinking water. In the regions of Kavango, Oshana and Oshana the share of households where the distance to the source of drinking water is 3 kilometres or higher.

## **XXIII. Racial discrimination, racism and xenophobia**

100. Namibia became a state party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1982, when the UN Committee for Namibia ratified it on behalf of the people of Namibia. After independence, the Government adopted a policy of National reconciliation whereby people were expected to forgive one another for the wrongs committed in the past and forge ahead in a conciliatory tone and nation building. In 1991, parliament enacted legislations to give effect to the Convention; namely: Racial Discrimination Prohibition Act No 26 of 1991 as amended in 1998, Agricultural (Commercial) Reform Act No 6 of 1995, Affirmative Action (Employment) Act No 29 of 1998, the Education Act No 16 of 2001, and Children Status Act No 16 of 2006. In 2007, Namibia submitted its combined report on CERD for the period 1997 to 2005 to the relevant treaty body.

## **XXIV. Torture, inhuman and degrading treatment**

101. Namibia acceded to the Convention against Torture and other Acts of Cruel, Degrading and Inhumane Treatment or Punishment in 1994. Article 8 of the Namibian Constitution prohibits torture or cruel, inhuman or degrading treatment or punishment. It is part of the Bill of Rights which is entrenched which means that suspension of this right is

prohibited. Once again, Namibia appreciates the advice of the treaty body on Torture which recommended that Namibia enacts legislation that would clearly define and criminalize torture in the criminal justice system. The Law Reform and Development Commission have recently reported that the delay to implement the committee's recommendation was due to the lengthy consultation process with experts on the subject matter. Namibia is pleased to report that a Draft Bill is ready and it will soon be submitted to the Minister of Justice.

## **XXV. The rights of the child**

102. The Namibian Constitution contains provisions that protect and promote children's rights such as the rights to a name, nationality, the right to education, the right to know and be cared by their parents, protection against economic exploitation and hazardous work, and protection against detention under the age of 16 years.

103. Namibia adopted the Convention on the Rights of the Child and its Optional Protocols in 1990, during its first year as a nation. Two years later the initial report to the treaty body was submitted. The First, Second and Third periodic report was submitted in 2009. Since independence Namibia has undertaken a broad programme and policies including enacting legislation to improve the social wellbeing and safety of the children in Namibia. The Government created the Ministry of Gender Equality and Child Welfare to focus more on the needs of women and children. In fact Namibia is amongst the top countries in Africa with the most child friendly policies.

### **Birth registration of children**

104. Namibia is among the first African countries to ratify the Convention on the Rights of a Child, which states that all children have the right to be registered immediately after birth and. The Ministry of Home Affairs and Immigration is responsible for the normal birth registration and issuing of birth certificates of both new born babies and other citizens. In the near future, the Ministry together with the Ministry of Health and Social Services are planning to expand birth registration points around the country especially to hospitals. As from the end of September 2008 all the babies born in Windhoek are getting registered immediately and issued with birth certificate. The Ministry of Home Affairs and Immigration set up a satellite office at the Katutura State hospital where registration can be done immediately after birth.

## **XXVI. Refugees and asylum seekers**

105. Namibia ratified the Convention relating to the Status of Refugees of 1951 as well as the Protocol relating to the status of Refugees of 1967 and the African Union Convention governing the specific aspects of the Refugees in Africa of 1969. Parliament passed legislation in the form of The Refugee Recognition and Control Act of 1999 to give effect to these international instruments. This Act provides for the granting of asylum or refugee status and the Government has established a system for providing protection to refugees. The Government reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement in consideration of national security. In practice the Government provides protection to refugees against expulsion or return to countries where their lives or freedom would be threatened.

106. Approximately 7 200 refugees and asylum seekers reside at the Osire refugee settlement while approximately 1300 refugees live outside the settlement. Angolan refugees represent 75% of the refugee population. The Government maintains strict control over

civilian access to the Osire Settlement; however, the ICRC, UNHCR, and the UNHCR's NGO Partners have regular and unrestricted access to the Settlement.

## **XXVII. Government pension and social security**

107. In order to meet the object of reducing inequalities in social welfare, parliament has passed the National Pensions Act No 10 of 1992, which provides for old age and disability grants to old and disabled persons. More than 136 000 old age and 23 000 disable persons are being paid N\$500-00 per month and Funeral Benefit of N\$ 2000-00 respectively. Namibia is one of the few African countries that pays social grant of this nature to take care of its senior citizens. A maternity benefit of maximum N\$9000-00 is paid for employed mothers going on maternity leave for a minimum period of three months. This benefit is paid by Namibia's Social Security Commission. Benefits are also paid by the Social Security Commission during period of sickness and in the case of death of persons who are employed.

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