


AFRICAN UNION		UNION AFRICAINE
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Consideration of reports submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights

Concluding Observations on the Republic of Namibia 7th Periodic Report on the implementation of the African Charter on Human and Peoples' Rights and 2nd Report on the Protocol on the Rights of Women in Africa (Maputo Protocol)

Banjul, 26 July 2022

Introduction:

1. The Republic of Namibia (Namibia) ratified the African Charter on Human and People's Rights (the African Charter) on 30 July 1992 and the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol) on 11 August 2004.
2. In accordance with the African Charter's Article 62, and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) Article 26 provisions, Namibia submitted its 7th Report on the implementation of the African Charter in February 2021. The Report covers the period 2015 to 2019 and includes a Section on the implementation of the Maputo Protocol.
3. Previously, Namibia submitted its 6th Periodic Report (2011-2014) to the African Commission on Human and Peoples' Rights (the Commission) in November 2015. The Report was considered during the Commission's 58th Ordinary Session, held in April 2016. The Concluding Observations and Recommendations on the 6th Periodic Report were adopted by the African Commission during its 20th Extra-Ordinary Session, held in June 2016.
4. The present report was reviewed virtually on 22 and 23 November 2021, during the Commission's 69th Ordinary Session. A Namibian high-level delegation was led by Mr. Simataa L. Limbo, Acting Executive Director, Ministry of Justice, on behalf of Her Excellency Ivonne Dausab, Minister of Justice, who also attended a portion of the review.¹
5. The Commission appreciates the presentation of the Report by the high-level delegation from Namibia, and the constructive dialogue that followed the presentation.
6. During the review, the Namibian Delegation indicated that it will exercise its right to reply in writing to questions that were not addressed in the presentation.
7. On 26 November 2021, the Secretariat transmitted a Note Verbal to the Government of the Republic of Namibia, requesting written contributions relating to the responses provided during the dialogue with the Commission, in order to facilitate the preparation of the Concluding Observations and Recommendations and thus to close the review process. Reminders have been also sent to the Namibian Embassy in Addis Ababa.

¹ The detailed list of delegation is attached (Annex).

8. On 12 April 2022, the Commission received a written response from the Embassy,² which indicated that some of the questions had not been adequately responded to, or not responded to at all, due to the fact that the Ministry of Justice was still waiting for information from the relevant line Ministries.
9. The Report highlights developments in the country in the promotion and protection of human and peoples' rights, as well as legislative, administrative and judicial measures taken in the framework of the implementation of the African Charter provisions, for the period 2015-2019.
10. The Commission notes with satisfaction the achievements of Namibia in terms of promoting the political role of Women, who represent currently 44% of the National Assembly component.
11. At the normative level, the Commission welcomes the ongoing review of many legislative instruments dealing with human rights, such as the Combating of Rape Act, the Labor Act, the Combating of Domestic Violence Act, the Combating of Trafficking in Persons Act, in order to provide better protection for human rights and safeguards to victims.
12. The Commission takes note in particular of the Promulgation of Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018) aimed to abolish all apartheid era discriminatory legislation.
13. At the institutional level, the Commission takes note of the establishment of The Namibian Revenue Agency and the Food Bank, among other institutions.
14. Namibia acknowledges the existence of challenges relating to human rights promotion, inter alia, the promotion of economic and social rights, recurring draught, some isolated harmful practices and the protection of minorities.
15. The present Concluding Observations provides an account of the positive aspects and the factors restricting the enjoyment of human rights in Namibia. It also highlights areas of concern identified in the Report; and from additional information provided during the review.
16. Finally, the Commission makes recommendations to Namibia on measures needed to strengthen the enjoyment of human rights, as guaranteed by the African Charter, the Maputo Protocol as well as other relevant regional and international human rights instruments.

² NV n°6/10/4/2/12 of 12 April 2022.

A. The African Charter on Human and Peoples' Rights

I. General Recommendations

- **Article 62: Reporting obligations**

17. The Commission welcomes the commitment of the Government of Namibia towards its reporting obligations under the African Charter and the Maputo Protocol.

Recommendations: For its next Periodic Reports, Namibia should Comply with the Commission's State Reporting General Guidelines and the Commission's State Reporting Guidelines under the Maputo Protocol.

- **Ratification**

18. The Commission takes note of the establishment by the Government of Namibia in 2017 of a national Sectorial Committee on ratification of AU instruments and the other International Human right instruments.
19. The Commission is concerned that a number of African and other relevant international human rights instruments are yet to be ratified by Namibia.
20. In 2016, the Commission made a recommendation inviting Namibia to ratify several international human rights instruments.

Recommendations: The Commission reiterates its recommendation to Namibia to ratify the following instruments:

At the African Union level:

- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), signed in October 2009,
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Signed in June 1998 (ongoing consultations),
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons,
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa,

- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

At the United Nations level:

- Convention for the Protection of All Persons from Enforced Disappearance,
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- Optional Protocol to the Convention against Torture,
- Optional protocol to the International Covenant on Economic, Social and Cultural Rights,
- 3rd Optional Protocol to the Convention on the Rights of the Child,
- ILO Convention 169 on Indigenous and Tribal Peoples.

- **Article 1: legislative measures on the domestication of the African Charter provisions**

21. The Commission takes note of the continuous efforts made by the Namibian Government in order to domesticate its international commitments, particularly through the adoption or amendments of laws and bills dealing with human rights.
22. Namibia adopted the Child Care and Protection Act of 2015. Article 1 of this Act defines a child as anyone under the age of 18, while Article 15 of the Namibian Constitution defines a child as anyone under the age of 16 years.

Recommendations: Namibia should:

- [Align the Child Care and Protection Act to match with the child definition in the Constitution of the country \(under the age of 18 years\).](#) Finalise the adoption process of bills drafted and submitted to the Minister of Justice, such as the bills on Civil Marriages, Intestate Successions and Customary Marriages.

- **Article 26: National Human Rights Institutions (NHRIs) and other institutions**

23. Namibia established the Office of the Ombudsman as a national human rights institution. It has been re-accredited in October 2018 with “A-Status” within the Global Alliance of National Human Rights Institutions.
24. The Commission takes note of the intention of Namibian authorities to extend the mandate of the Ombudsman, through amending the Ombudsman Act of 1990, to

include, inter alia, the promotion and protection of economic, social and cultural rights.

25. However, according to Paris Principles and other relevant documents, NHRIs need appropriate human and financial resources to fulfil their mandates.

Recommendations: Namibia should

- Ensure the financial independence of the Ombudsman, in particular through a separate budget, as provided for by relevant international standards.
- Provide an adequate funding to the Ombudsman, particularly in line with the views to extend its mandate to cover additional human rights.
- Strengthen the Office of the Ombudsman's cooperation with the African Commission, particularly through requesting the affiliate status.

II. Civil and Political Rights

- **Article 2: Right to Non-Discrimination**

26. During the review of the 7th Periodic Report, the Namibian delegation agreed that some aspects in relation to discrimination require extensive consultations, in order to engage constitutional, policy or legislative reforms.

27. The Commission takes note with appreciation of the Promulgation of Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018) aimed to abolish all apartheid era discriminatory legislation.

28. The Commission takes note also that the 2017 Ombudsman enquiry on racism recommendations are being implemented.

Recommendations: Namibia should:

- Engage consultations on constitutional, policy or legislative reforms to address aspects in relation to discrimination.
- Continue its efforts aiming to implement the 2017 Ombudsman enquiry on racism recommendations.

Mandate of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

- **Article 3: Right to Equality before the Law and Equal Protection of the Law**
- **Article 6: Right to Personal Liberty and Protection from Arbitrary Arrest**
- **Article 7: Right to Fair Trial**

29. The delegation recognised some challenges in implementing the right to appear in Court within 48 hours, particularly in rural areas, where justice and police facilities lack the necessary human resources.
30. The delegation also recognised that, despite ongoing efforts to enhance access to justice, the budget allocated to Legal Aid is not adequate to cover most of the applications.
31. The Commission takes note of ongoing recruitment of judiciary officers and magistrates, in order to improve the judiciary service.
32. The Commission also takes note of the country's efforts to establish and/or provide educational, vocational and religious programs to inmates during their confinement, despite financial constraints.
33. The Commission did not receive any information, neither during the interaction session with the distinguished delegation of Namibia nor in the written replies submitted, on the human rights training, especially on the instruments adopted by the Commission, of Namibian police and other public order and security forces.

Furthermore, the Honourable Delegation did not provide information on the minimum age of criminal responsibility according to the Criminal law in force in the country and its consequences under regional and international guidelines, more specifically, the treatment of minors in conflict with the law, their accommodation, education and monitoring by the competent bodies.

Recommendations: Namibia should:

- Adopt effective measures to tackle the identified challenges to implement the right to appear in court within 48 hours after being arrested, including at judicial level.
- Increase the budget allocated to Legal Aid to enhance access to justice.
- Continue its efforts in the fields of recruitment of judiciary officers and magistrates and enhancing the use of alternatives to detention.
- **Continue the efforts to implement rehabilitation programs aimed at the integration of prisoners into society, which have already been started and are to**

be started, so that prisoners receive education and vocational training as well as religious assistance.

- Provide some information on the police and other law and order and security agencies, their gender composition, and their training, both initial and ongoing, in human rights, more specifically with regard to the regional and international instruments adopted.

- Provide information on the minimum penal age in force in the country; and the respect for physical separation in accommodation in prison facilities and training for social reintegration.

Mandate of the Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa

- Article 4: Right to Life

35. In Namibia, the death penalty is prohibited under Article 6 of the Constitution.

36. The Commission takes note that the prosecution of the two police officers responsible for the death of David Tuhafeni at Oyongo village is in process.

Recommendation:

- As an abolitionist state, Namibia is encouraged to contribute to regional and international efforts aimed at the universal and effective abolition of the death penalty, particularly by sharing its national experience in this area.
- Ensure effective accountability of perpetrators of any arbitrary or extra judiciary killing, including Police and Defence Forces members acting outside of the scope of the law.

Mandate of the Committee for the Prevention of Torture in Africa

- Article 5: Prohibition of Torture and Cruel, Inhuman and Degrading Treatment

37. The Commission takes note of the progress made in enacting a specific law against torture (Anti-Torture Bill 2019), expected to be submitted to the Parliament this year.

38. The Commission also notes that the Legal Assistance Center developed a Manual on the use of force by law enforcement officials.

Recommendations: Namibia should

- Strengthen the work of Police and Defence forces Units in charge of investigating misconduct.
- Finalise the adoption process of the Anti-torture Bill.

Mandate of the Special Rapporteur on Freedom of Expression and Access to Information

- Article 9: Right to Receive Information and Free Expression

39. Namibia affirms that no journalist has ever been arrested, tried or convicted for performing his/her work in the country and that platforms are provided for citizens to criticise or praise the Government policies.

40. The Commission takes note that the Namibian Government is at an advanced stage in enacting the Access to Information Bill.

Recommendation: Namibia should:

- Finalise the enactment of the Access to Information Bill and guarantee that its implementation will contribute to an effective promotion of freedom of expression and access to information, and will enhance the protection of journalists and access to internet.
- Keep encouraging community broadcasting and freedom of access to Internet in the country.

Mandate of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa

- **Article 10: Right to Freedom of Association**
- **Article 11: Right to Freedom of Assembly**
- **Article 13: Right to Participate in Government**

41. The Commission takes note of the role of the Legal Assistance Center in promoting and advocating for human rights in Namibia.

42. In 2016, the Commission made recommendations to Namibia to provide adequate information and statistical data on the number of NGOs and CSOs in the country, and to provide specific information on the situation of human rights defenders in its next Periodic Report.

43. The Commission takes note with appreciation of the commitment of the Namibian authorities to encourage the cooperation of the civil society with the Commission , including through requesting the Observer Status with the Commission.

Recommendations: Namibia should:

- Adopt a specific law on the protection of human rights defenders in Namibia.
- Address the financial challenges to ensure effective implementation of Whistle-blower Protection Act and Witness Protection Act.
- Consider assisting human rights organisations, including through providing funding and other kinds of support.

III. Economic, Social and Cultural Rights

Mandate of the Working Group on Economic, Social and Cultural Rights

- Article 14: Right to Property

44. The Delegation of Namibia enumerated some outcomes of the Second Land Conference, including expropriation, foreign-owned farms, underutilised lands, among others.

45. The Commission takes note of the additional measures aiming to alleviate the shortage of affordable housing, namely those taken by the National Housing Enterprises.

46. In 2016, the Commission made a recommendation to Namibia to put in place comprehensive policies, plans and programs aimed at making acquisition of land and housing accessible and affordable for all its citizens, particularly the poor and those in the rural areas.

Recommendation: Namibia should:

- Provide detailed information on the outcomes of the Second Land Conference, in particular with regards to expropriation.
- Continue the implementation of the housing policy, especially for low and middle-income citizens.

- **Article 15: Right to Work**
- **Article 16: Right to Health**
- **Article 17: Right to Education**
- **Article 22: Right to Economic, Social and Cultural Development**

47. The Commission is concerned about the lack of written or oral responses to the questions submitted under this section.

Recommendations: Namibia should:

- Adopt legislation and policies aimed at enhancing the rights of all workers.
- Consider merging the three collective agreements that regulate the minimum wage, as one.
- Develop a universal social security system, with full coverage for all the population.
- Extend the wellness programs provided in the civil service for the rest of the population.
- Guarantee that all citizens can enjoy their human rights, in the context of the Covid-19 pandemic.
- Redouble efforts to achieve the process of repealing and replacing the Education Act of 2001(Act No. 16 of 2001).

48. Rights of the family and vulnerable groups

- **Article 18**

Mandate of the Working Group on Rights of Older Persons and People with Disabilities

49. The Commission takes note of preliminary discussions on the ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

50. The Commission is concerned about the existence of several challenges in terms of communication and providing assistance to persons with disabilities in rural areas, as recognised by the Namibian Government.

Recommendations: Namibia should:

- Consider recognising disability and age as prohibited grounds of discrimination in the Namibian Constitution or the legislative corpus.
- Adopt a policy on the rights, protection and care of older persons and ensure its effective implementation.
- Align the National Disability Council Act of 2004 and the National Policy on Disability of 1997 with the provisions of the Convention on the Rights of Persons with Disabilities ratified by Namibia in December 2007.

Mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa

51. The Commission welcomes the obtaining of residence permits by 1800 refugees in Namibia and the assistance currently provided to some 2400 others, for the same purpose.

52. However, the Commission is still concerned about the non-ratification by Namibia of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention, as already mentioned under the section on ratification.

Recommendations: Namibia should:

- Consider amending the national legislation, especially Section 24 (1) of the Namibia Refugees Act of 1999 (Recognition and Control), in order to align it with international obligations, inter alia, under Article 3 of the Convention against Torture, which establishes an absolute prohibition of refoulement when there is a risk of torture.
- Consider adopting specific legislation to protect people against statelessness.
- Adopt specific legislation that addresses the rights of migrants, especially the right to work.

Mandate of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV

53. Regarding the high prevalence of HIV in prison, the Namibian Delegation affirmed that this issue is being addressed in the framework of the National Correctional Service Health Policy, which advocates for equal health conditions for inmates and the general public.

54. The Commission takes note with concern that the State Party did not provide written or oral responses to the other questions submitted under this section.

Recommendations: Namibia should:

- Elaborate an assessment on the impact of the updated 2016 Treatment Guidelines.
- Redouble efforts to eliminate mother to child HIV transmission.
- Redouble efforts to combat the stigma faced by persons living with HIV, particularly in the educational sector.

55. Collective Rights/Peoples' Rights

- **Articles 19, 20, 21, 23 and 24**

Mandate of the Working Group on Extractive Industries, Environment and Human Rights Violations

56. The Commission takes note of the moratorium decided by the Namibian Cabinet on maritime phosphate mining on Namibian coastal waters, due to its environmental impact.

57. The Commission takes note also of the consultative meeting held by the Parliamentary Standing Committee on Natural Resources, regarding the oil and gas exploration in Kavango.

Recommendations: Namibia should:

- Comply with the Commission's State Reporting Guidelines on Extractive Industries, Environment and Human Rights Violations.
- Ensure the effective participation of relevant stakeholders in conceptualisation and implementation of mining projects.
- Ensure the full protection of protection of indigenous communities' human rights, in the context of business/extractive corporations' activities.

Mandate of the Working Group on Indigenous Populations/Communities and Minorities in Africa

58. The Namibian delegation affirmed the importance of consulting indigenous communities to develop projects, policies and initiatives affecting them.

59. In 2019, Namibian authorities established a Commission of Enquiry on the claims of ancestral land rights, in order to restore social justice and economic empowerment of the affected indigenous communities.

60. However, the Commission notes with concern that many San indigenous people, among other Namibian citizens, still do not have formal identification documents.

Recommendations: Namibia should:

- Consider including a reference to indigenous peoples and their rights in the Constitution.
- Continue addressing inequalities and social exclusion of indigenous communities.
- Redouble efforts to strengthen the access of indigenous communities to essential services, including health, education, housing, access to justice, among others.
- Ensure that indigenous communities are granted birth certificates, Government identification cards or other identification documents.
- Address effectively the problems relating to land as far as indigenous communities are concerned, in particular through the newly established Commission of Enquiry on the claims of ancestral land rights.

B. The Maputo Protocol

Mandate of the Special Rapporteur on Women Rights in Africa

61. The Commission commends Namibia for submitting its Second Report in accordance with Article 26 of the Maputo Protocol.

62. The Commission takes note that Namibia recognises that gender and sexual based violence (SGBV) remains a challenge for the country, and is currently implementing the prioritised Plan of Action on GBV 2019-2023 and reviewing its existing laws and strategies to find lasting solutions to this challenge.

- **Articles 2 and 3: Equality and Non-Discrimination**

63. The Commission takes note of achievements of the National Gender Policy, particularly in mainstreaming gender in various sectors.

Recommendation: Namibia should redouble its efforts to ensure the full implementation of gender equality by the Ministry in charge of this topic and other relevant institutions.

- **Articles 4, 5, 6 and 7: Violence against Women, marriage, Divorce, Separation and Annulment:**

64. Namibia enacted the Childcare and Protection Act which addresses some harmful traditional practices, especially those related to early and forced marriage.

65. The Commission welcomes the establishment by Namibian authorities of eight (8) shelters in eight (8) regions for victims of GBV, and regional GBV clusters in thirteen (13) regions.

66. The Commission welcomes the recruitment of staff in November 2021, as a first step to operationalise the existing shelters.

67. However, the Commission is concerned about the fact that SGBV is still a challenge despite all efforts made by Namibian authorities.

Recommendation: Namibia should

- Strengthen the implementation of GBV measures and policies to combat violence against women, particularly in rural areas.
- Ensure that the eight GBV shelters are all fully functional.
- Address other kinds of existing harmful practices / discriminatory or harmful customary laws, in particular with during marriage, divorce or separation.
- Ensure that marriage laws are in line with the provisions of the Maputo Protocol, particularly with regards to the minimum age for marriage.

- **Article 9: Participation in Political and Decision-Making Process**

68. The Commission notes with satisfaction the achievements reached by Namibia in terms of promoting the political role of women, who represent currently 44% of the National Assembly component.

Recommendation: Namibia should redouble efforts to improve women's representation in decision-making position in both public and private sectors, in all regions of the country.

- **Articles 10 and 11: Right to Peace; and protection of women in armed conflicts**

69. The Commission takes note of the existing efforts in order to raise awareness about the Maputo Protocol and UN Resolution 1325 on women, peace and security.

Recommendation: Namibia should strengthen the participation of women in peace-building educational programmes and peace initiatives.

- **Articles 12, 13, 14, 15, 16 and 17: Economic, Social and Cultural Rights**

70. The Commission notes with concern that the State Party did not provide written or oral responses to the questions submitted under this section.

Recommendation: Namibia should:

- Provide adequate, affordable and accessible health services, including information, education and communication programmes to women, especially those in rural areas.

- Ensure an effective implementation of the national policy to strengthen the reintegration of pregnant girls back into the education system after delivery.
- Ensure that rural women have access to bank loans and are able to own property in their own name.

- **Articles 20-24: Protection of Specially Protected Groups of Women**

71. The Commission takes note that the Communal Land Reform Act protects widows from property grabbing and evictions.

Recommendation: Namibia should:

- Adopt measures to adequately protect the rights of widows in line with the Maputo Protocol, especially those married under customary law.
- Adopt measures to protect the rights of women in prison, especially during this period of the COVID-19 pandemic.

Conclusion

72. The Periodic Reports review is an important component of the mandate of the African Commission on Human and Peoples' Rights.

73. The reporting obligation of States Parties is, in fact, an effective tool for assessing the implementation on the ground of the implementation of human rights enshrined in the African Charter and Maputo Protocol.

74. The Commission wishes to congratulate the Republic of Namibia for the submission of its 7th Periodic Report on the implementation of the provisions of the African Charter, and its 2nd Periodic Report on the Maputo Protocol.

75. The constructive engagement of the Namibian authorities during the Periodic Report review is also to be commended.

76. Namibia is encouraged to continue its constructive cooperation and engagement with the African Commission.

77. The Commission hopes that the present recommendations will be considered and implemented by the Government of Namibia.

78. Namibia is now up to date with its obligations under Article 62 of the Charter and Article 26 of Maputo Protocol, as provided in **Resolution ACHPR/Res.517 (LXX) on the Method of Calculation of Periodic Reporting Deadlines.**

The Commission invites the Republic of Namibia to submit its next Periodic Report on the implementation of the provisions of the African Charter and the Maputo Protocol **in August 2024.**

Adopted during the 72nd Ordinary Session of the African Commission on Human and Peoples' Rights, held virtually from 19 July to 3 August 2022

Annex

List of the delegation of the Republic of Namibia that presented the periodic Report on 22 and 23 November 2021:

1. Mr. Simataa L. Limbo, Acting Executive Director-Ministry of Justice,
2. Dr. Christian Harris, Chief Legal Officer - Ministry of Justice,
3. Mr. Alex Tubaundule Zambwe, Chief Legal Officer - Ministry of Justice,
4. Ms. Charmaine Nujoma, Senior Legal Officer - Ministry of Justice,
5. Ayesha Wentworth, Deputy Director Ministry of Education, Arts and Culture,
6. Briggitte Nshimiyimana, Control Social Worker- Child Care and Protection- Ministry of Gender Equality, Poverty Eradication and Child Welfare,
7. Rahimisa Kamuingona, Deputy Director, Child Care and Protection- Ministry of Gender Equality, Poverty Eradication and Child Welfare,
8. Mr. Nehemia Nghishekwa, Chief of Immigration, Ministry of Home Affairs, Immigration, Safety and Security,
9. Delia Mubita, Deputy Commissioner -Ministry of Home Affairs, Immigration, Safety and Security,
10. Ms. Yvette Husselmann, Chief Foreign Relations Officer, Ministry of International Relations and Cooperation,
11. Mr. Nande Kayala, Chief Labour Relations Officer, Ministry of Labour, Industrial Relations and Employment Creation.
