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African Commission on  
Human and Peoples' Rights

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**REPORT OF THE PROMOTION MISSION TO THE REPUBLIC OF  
NAMIBIA**

**BY**

**HON. COMMISSIONER JANET RAMATOULIE SALLAH-NJIE**

**12 to 16 June 2023**

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### ACRONYMS

The African Commission on Human and Peoples' Rights	The Commission
Republic of Namibia	Namibia
Civil Society Organisations	CSOs
Non-Governmental Organizations	NGOs
Rules of Procedure	RoPs
Gender-Based Violence	GBV
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	The Maputo Protocol
The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa	Kampala Convention
African Union	AU
The Namibia Planned Parenthood Association	NAPPA
Optional Protocol to the Convention Against Torture	OPCAT
Convention Against Torture	CAT
National Preventive Mechanism	NPM
Grievous Bodily Harm	GBH
UN Standard Minimum Rules on the Treatment of Prisoners	Nelson Mandela Rules
Post Exposure Prophylaxis	PEP
Voluntary Medical Male Circumcision	VMMC
Offender Risk Management Correctional Strategy	ORMCS
Ministry of Health and Social Services	MoHSS
Community Health Workers	CHWs
Psycho-Social Support Services	PSS
Committee on Land and Social Issues	CCLSI
United Nations Declarations on the Rights of Indigenous Peoples	UNDRIP
Convention on the Elimination of All Forms of Racial Discrimination	ICERD

## ACKNOWLEDGEMENTS

1. The African Commission on Human and Peoples' Rights (the Commission) would like to express its gratitude to the Government of the Republic of Namibia (Namibia) for authorizing this Promotion Mission and putting at the disposal of its Delegation all the facilities and personnel to ensure its success, as well as for the frank and constructive dialogue during the Mission.
2. In particular, the Commission wishes to express its appreciation to the Ministry of Justice, who accompanied the Delegation throughout its Mission, and the excellent arrangements put in place, which enabled the Delegation to meet a variety of Government officials and other actors, and to have a fairly representative view of the human rights situation in the country.
3. The Commission also wishes to thank all the representatives from various Government Ministries, Independent Statutory Institutions, Civil Society Organisations (CSOs), other Institutions, the Media, and individuals who found time to meet with its Delegation.

## EXECUTIVE SUMMARY

4. The Commission undertook a five (5) day promotion mission to Namibia from **12 to 16 June 2023** and met with various Government authorities and representatives from inter-governmental and Non-Governmental Organizations (NGOs). This mission was undertaken in line with Article 45(1) of the African Charter on Human and Peoples' Rights (the African Charter), which mandates the Commission to promote the observance of the rights guaranteed, to monitor its implementation, to ensure the protection of the rights and freedoms set out therein, and to interpret the Charter.
5. The mission is also part of the implementation of Rule 76 of the Commission's 2020 Rules of Procedure (RoPs), which authorizes the Commission to undertake "*from time to time, promotion missions to States Parties.*" The combined reading of Article 45(1) of the African Charter and Rule 76 of the RoPs makes it imperative for the Commission, during promotion missions, to gather information on the implementation of the provisions of the African Charter to formulate principles and rules that can serve as a basis for the development of legislation and policies relating to human rights.
6. The promotion mission aimed at engaging State and non-State actors, including CSOs, on the current state of human and peoples' rights in the country, promoting the African Charter and its various Protocols, and raising awareness among Namibia stakeholders about the Commission's work. Several areas of concern were noted, for which recommendations have been proposed to ensure the effective promotion and protection of human rights in Namibia.
7. In this Report, the Commission proposes several recommendations, including calling on the Government to expedite the ratification of regional and international instruments, implement existing laws, ensure the effective implementation of the rules and strategies protecting women from Gender-Based Violence (GBV); establish an Independent Police Oversight body to investigate allegations of violations committed by the Police and other Law Enforcement Officers; resolve youth unemployment, and also provide them with professional training and life skills; build dedicated Juvenile Facility or construct separate Units for Juvenile Offenders; and develop strategies and policies to address the incidences of homelessness, arising from eviction of farm workers, who have been living and working on such land, over generation.

## INTRODUCTION

### Composition of the Delegation

8. The Commission's Delegation comprised **Honourable Commissioner Janet Ramatoulie Sallah-Njie**, Commissioner Rapporteur on the human rights situation in the Republic of Namibia, and Special Rapporteur on the Rights of Women in Africa.
9. Ms. Irene Desiree Mbengue, Senior Legal Officer from the Secretariat of the Commission, assisted the Honourable Commissioner and provided technical support during the mission.

### Terms of Reference

10. The objectives of the mission to Namibia, according to the Terms of Reference, were as follows:
  - i. To promote the African Charter through the exchange of views and sharing of experiences with the Government of the Republic of Namibia and the main stakeholders working in the field of human rights on how to improve the enjoyment of human rights in the country;
  - ii. To raise awareness of and visibility of the Commission in Namibia, especially among the relevant Government departments and civil society;
  - iii. Meet State institutions and all the other stakeholders involved in the promotion of women's rights to discuss ongoing policies and programs for the protection of women's rights in the country;
  - iv. Disseminate the African Charter and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol);
  - v. To raise awareness and the visibility of the mandate of the Special Rapporteur on the Rights of Women in Africa, with the view to





establishing networks of stakeholders who can provide information to the same;

- vi. Ensure that the Special Mechanisms of the Commission are known through their composition and mandate by emphasizing the importance of establishing more potent synergy between these mechanisms and CSOs;
- vii. To hold discussions with the governing authorities to exchange views and collect all relevant information on the extractive industries sector, its effects on the environment, and mechanisms to ensure the protection of human rights in the country;
- viii. To hold discussions on civil and political rights, as well as social, economic, and social rights and their implementation in the country;
- ix. To hold discussions with Prison Administrative Officials and other stakeholders on all issues relating to detention and prisons and on the work of the Commission on this specific theme;
- x. To hold discussions on other thematic issues of relevance to the Commission;
- xi. To visit prisons and places of detention in Namibia to assess the extent to which conditions of detention comply with regional and international standards and
- xii. To inquire about the monitoring and implementing the recommendations of the Concluding Observations on the Republic of Namibia's 7<sup>th</sup> Periodic Report on the implementation of the African Charter and the 2<sup>nd</sup> Report on the Maputo Protocol.

### **Previous Engagements between the Commission and Namibia**

11. The present mission was the second (2) mission to Namibia. The first mission was undertaken from **24 to 27 August 2009** by Hon. Commissioner Pansy Tlakula, who was responsible for promoting and protecting human rights in the Republic of Namibia.

## Country Profile

12. The Population of Namibia in 2022 was 2,567,012, a 1.46% increase from 2021<sup>1</sup>. Namibians are of diverse ethnic origins. The principal groups are the Ovambo, Kavango, Herero/Himba, Damara, mixed race ("colored" and Rehoboth Baster), white (Afrikaner, German, and Portuguese), Nama, Caprivian, San, and Tswana. English is the official (official) Oshivambo, Afrikaans, German, Herero, Nama/Damara, and other indigenous languages.
13. Namibia is bounded on the north by Angola and Zambia, on the east by Botswana, and on the east and south by South Africa. It is primarily a portion of the high plateau of southern Africa, with a general elevation of 3,000 to 4,000 ft.
14. Namibia is governed under its 1990 Constitution. According to Article 1(3) of the Constitution, there are three main state organs: The executive, the legislative, and the judiciary. The doctrines of the separation of powers and the rule of law underpin the relationship between these three organs.
15. Namibia is a multiparty, multiracial democracy, and the President, the Head of State, is popularly elected for a five-year term and is eligible for a second term. The government is headed by a Prime Minister, whom the President appoints. There is a bicameral legislature. The National Council has 26 seats, with two members chosen from each regional council to serve six-year terms. Members of the 72-seat National Assembly are popularly elected for five-year terms. Administratively, the country is divided into 13 regions<sup>2</sup>.
16. The Namibian legal system is characterized by legal pluralism. It amalgamates Westminster-style Constitutional law, Roman-Dutch common law, customary law, and international law. The President of Namibia is the Head of State, the government, and the Commander-in-Chief of the armed forces. The President is elected directly in a universal adult suffrage system for five years. He is restricted to a limit of two terms. The President is responsible for upholding the law and Constitution and reporting to the National Assembly once a year. He also appoints the Prime Minister, Attorney General, and other cabinet members.
17. The Cabinet comprises the President, the Prime Minister, and any other Ministers the President appoints from the National Assembly. The Cabinet directs and

<sup>1</sup> <https://www.macrotrends.net/countries/NAM/namibia/population-growth-rate#:~:text=The%20population%20of%20Namibia%20in,a%201.74%25%20increase%20from%202019.>

<sup>2</sup> [www.inforplease.com](http://www.inforplease.com). Encyclopedia-Namibia



supervises the Ministries of the President and reports to the National Assembly on international trade and treaty matters.<sup>3</sup>

18. The courts are divided into three levels. The highest court is the Supreme Court, led by a Chief Justice and at least three other judges. The Supreme Court has appellate jurisdiction over appeals from the High Courts, cases involving interpretation of the Constitution, and matters referred to them by the Attorney General.
19. The High Court consists of a Judge-President and other appointed judges. The High Court has original jurisdiction over matters concerning the interpretation of the Constitution, all civil and criminal cases, and cases on appeal from the Lower Courts.

## Methodology

20. During the mission, the Delegation held discussions with various State and Non-State Actors (see Annex 1) involved in the promotion and protection of human and people's rights in Namibia.
21. The Delegation visited the Male and Female wings of Windhoek Central Correctional Facility and the Klein Windhoek Police Holding Cells.
22. At each of these meetings, the Delegation introduced the work of the Commission by outlining its organisation, composition, mandate, activities, and subsidiary mechanisms. It further presented the objectives of the mission and the need to bring out good practices and highlight challenges to make relevant recommendations.
23. The mission ended with a Press Conference.

## FINDINGS

24. The mission lasted for five (5) days, during which the Delegation visited various offices and institutions within Namibia and had the opportunity to meet and interact with a cross-section of relevant stakeholders.

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<sup>3</sup> Namibia Legal System:

[http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia\\_Legal\\_System.htm](http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia_Legal_System.htm)



25. Overall, the Delegation observed extensive interaction during the meetings with the various Government representatives and other stakeholders. Furthermore, owing to the short period in which the mission was conducted, the Delegation had an intense work program. Still, to a large extent, the stakeholders' meeting provided adequate information, which gave the Delegation an insight into the human rights situation in Namibia.
26. The Delegation's interaction with a broad segment of relevant stakeholders gave it valuable insights into the human rights situation in the country. Based on the interviews conducted and the information obtained by the Delegation during its exchanges with various stakeholders, the mission's findings are discussed below, in line with its Terms of Reference.
27. It is pertinent to note that Namibia is one of the few countries in the continent that gives optimum visibility to the African Union (AU), with the presence of the AU flag in all its public offices and the renditions of the AU Anthem at all official functions.

### **Legislative and other measures to implement the provisions of the African Charter**

28. The Delegation took note of the information provided on the measures taken by the Government to implement provisions of the African Charter. The Government had adopted laws to ensure the promotion and protection of human rights, including:
- i. Ratification of regional and international human rights instruments, including its recent deposit of the instrument of ratification for the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa in June 2023, making Namibia the 9<sup>th</sup> State to ratify the instrument;
  - ii. Adoption of an Access to Information Law in 2022;
  - iii. Laws, Strategies, and Programs to protect and promote the rights of women in Namibia, including the National Gender Policy; Combating of Domestic Violence Act; the National Plan of Action on Gender-Based Violence, 2019-2023; the Namibia Planned Parenthood Association (NAPPA), which safeguards Sexual Reproductive Health Rights; the establishment of a sex offenders' register and special courts to handle sexual and GBV offences, to



combat violence against women; and the establishment of 17 GBV Protection Units in 14 regions in the country; and

- iv. Commencement of Repeal of Obsolete Laws Act, 2018 (Government Notice 32 of 2019).

29. Additionally, the Delegation noted the need for more implementation and enforcement of laws due to various challenges, including a lack of resources, challenges in the justice sector, and enforcement officials.

30. Through its various interactions with State and non-state actors, the Delegation took note of Namibia's non-ratification of some regional and international human rights treaties. In particular, Namibia is not a party to the following:

- i. Optional Protocol to the Convention Against Torture (OPCAT);
- ii. Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights;
- iii. Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons; and
- iv. The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention);

### **Institutional measures for the implementation of the provisions of the African Charter**

31. The Namibian Government has set up several institutions which, by their missions, contribute to the promotion and protection of human rights in the country, including:

- i. Establishment of an Information Commission, which will be functional by the end of 2023, and the establishment of an Office of the Information Commissioner;
- ii. Appointment of an Independent Media Ombudsman to regulate the affairs of the media; and
- iii. The Community Advisory Committee is composed of people from various backgrounds appointed by the Commissioner General and mandated to inspect facilities and talk to inmates, amongst other things, which has improved Correctional Facilities.

## Monitoring the Implementation of Recommendations

32. The Delegation made inquiries on implementing the recommendations of the 2009 Promotion mission undertaken by the Commission.
33. The Delegation also followed up on the Concluding Observations on the Republic of Namibia's 7<sup>th</sup> Periodic Report on implementing the African Charter and the 2<sup>nd</sup> Report on the Maputo Protocol.
34. The Delegation learned that the Government had established a Standing Committee on Implementation and Coordination, amongst other things, to monitor the implementation of decisions from regional and international bodies. The recommendations and decisions of the Commission on State Reports, Communications, and Promotion missions fall within the ambit of the Committee.

## Promotion and Protection of Human Rights

35. During the mission, the Delegation also gathered information on different categories of human rights protected by the African Charter and other relevant instruments, as detailed below:

### *Access to Justice*

36. As highlighted above, the Namibian legal system is characterized by legal pluralism. It amalgamates Westminster-style Constitutional law, Roman-Dutch common law, customary law, and international law. The 1990 Constitution provides for the three main organs of the State, namely the Executive, the Legislature, and the Judiciary.
37. The Delegation found that the doctrines of the separation of powers and the rule of law work very effectively in Namibia. The Chief Justice is the head of the Judiciary, and all indications point to the fact that the judiciary is indeed very independent and free from any form of political or other interference. Citizens have equal, unimpeded access to the law. The Ministry of Justice is separate and distinct from the Office of the Attorney General and the Public Prosecutor.
38. Article 25 of the Namibian Constitution also guarantees the enforcement of Fundamental Rights and Freedoms, which entails the right to adequate, effective,



open, and transparent access to justice. The Namibian courts operate under the auspices of the principle of effectiveness in affording every individual the right to be heard and to have that right enforced where an alleged violation, which may be criminal or civil, has occurred. Notably, the Ministry of Justice's Directorate of Legal Aid makes provision for indigent persons to bring their cases to court.

39. More importantly, Article 144 of the Namibian Constitution makes provision for international agreements binding upon Namibia to form part of Namibia's laws in its efforts to honor and continue promoting its international and national human rights obligations.
40. However, the Delegation noted the need for more awareness of the jurisprudence, soft laws, and other relevant instruments of the Commission in the judicial decision-making process.

#### *Right to Life (Article 4 of the African Charter)*

41. The Delegation learned that Namibia abolished the death penalty in 1990 and noted no challenges to implementing the right to life.

#### *Prohibition and Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Article 5 of the African Charter)*

42. The Delegation learned that although Article 8 of the Constitution prohibits torture or cruel, inhuman, or degrading treatment or punishment, no law in the country defines "torture" or separately classifies it as a crime.
43. The Delegation was informed that as part of its efforts to combat acts of torture, in 2016, the Ombudsman developed a **Prevention of Torture Training Manual for Police Officers**. The objectives of the manual are to provide trainees with an overview of how the concept of torture prevention arose, to explain the principles of human rights as the basis to prevent torture, and to provide trainees with an overview of the prevention of torture principles, under the Namibian human rights context.
44. The Delegation also noted Namibia's ratification of the Convention Against Torture (CAT) but expressed concern that Namibia has yet to ratify the OPCAT.



45. On Anti-Torture measures taken by the Government, the Delegation learned that the Government has considered the ratification of the OPCAT; however, in the meantime, the country does not have the necessary capacity to meet the obligations of the Optional Protocol; and will reconsider the possibility to ratify the Protocol once the domestic legislative framework is finalised and operationalised.
46. The Delegation learned that the main obstacles are economic, infrastructural, and human resources, which must be improved to implement the obligations under the Optional Protocol. The Delegation was informed that Namibia is finalising domestic legislation on the prohibition of torture and the anti-torture Bill. This Bill was previously tabled in Parliament and withdrawn to address policy issues. The Bill was re-submitted to the Cabinet Committee on Legislation and is currently with the Attorney-General for certification.
47. In the absence of a specific law criminalizing torture (and other forms of cruel, inhuman, or degrading treatment or punishment as applicable), the Delegation learned that perpetrators of this offence are charged and prosecuted under the common law offences of Assault with intent to do Grievous Bodily Harm (GBH) and attempted murder. Similarly, these offences are listed as severe offences under **schedule I of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)** and under other legal frameworks such as; **section 2 of the Combating of Rape Act, 2000 (Act No. 8 of 2000); section 2 of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003); Section 228 (1) of the Child Care and Protection Act, 2015 (Act No.3 of 2015); the Combatting of Traffic in Persons Act, 2018 (Act No. 1 of 2018); the Labour Act, 2007 (Act No. 11 of 2007); Section 56 (1) of the Basic Education Act 2020 (Act No. 3 of 2020); and the Married Person Equality Act, 1996 (Act No. 1 of 1996).**
48. The Delegation was also informed that the office of the Ombudsman, together with the Office of the Inspector General of the Namibian Police and the Office of the Prosecutor General, is tasked to impartially investigate all allegations of torture and ill-treatment by State Agencies, as well as private entities and all individuals, to ensure that victims of human rights violation are protected, and offenders are brought to justice.
49. The Delegation learned that when an alleged victim of torture lays a complaint, they are advised by the Ombudsman to open a criminal case under the common law offences of Assault GBH and attempted murder. A case docket will then be opened, and the matter will be referred to a competent investigating officer for further investigations and possible prosecution of the offender. In cases of police brutality, the case, upon the recommendation of the Ombudsman, is referred to





the Office of the Inspector General of the Namibian Police for further investigations and possible prosecution of that member or members before a competent court.

50. Regarding the right to rehabilitation for victims of torture in Namibia, the Delegation learned that there is no specific law in place. However, civil claims and compensation for damages sought by a torture victim are instituted in the Lower and High Courts in terms of their respective legislation on civil procedure. Any victim can approach any Government health facility to seek treatment.

### *Prisons and Conditions of Detention*

51. The Delegation was informed that in terms of the Namibian Correctional Service, there is a six-monthly Basic Correctional Service Training Curriculum for newly recruited officers, which covers the Namibian Constitution, human rights, and UN Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules). The delegation also noted that the Namibian Correctional Service has not disseminated or incorporated the Robben Island Guidelines. However, it has adopted the Nelson Mandela Rules, which reflect similar provisions to those in the Robben Island Guidelines.
52. The Delegation also noted that from the perspective of the Namibian Correctional Service, inmates in correctional facilities receive three meals per day prepared according to a Dietary Menu that a qualified Dietician approved. The Menu provides a balanced diet and adequate food, including special diets for inmates with various health conditions, such as diabetes and those on ARV treatment.
53. Regarding medical services, the Delegation learned that all correctional facilities have clinics operated by Medical officers, nurses, special programs, and pharmacists. The Delegation was also informed that adequate food supply to inmates is reflected in the Strategic Plan of the Namibian Correctional Service and the Annual Plan of the responsible Directorate (Logistics and Administration). In addition, the Namibian Correctional Service has a food production strategy to ensure food self-sufficiency. It can supply maize meal, bread, and pork from its produce.
54. Regarding how often the places of detention and prisons are inspected, including in the State's intelligence and security services, the Delegation was informed that the Correctional Service Act, 2012 (Act No. 9 of 2012) makes provision for Visiting Justices to visit correctional facilities and conduct inspection as well as interview



inmates on corrective services, institutional management and conditions of imprisonment. In addition, Judges of the High Court, Magistrates, Members of Parliament, and the Ombudsman regularly visit correctional facilities under this provision.

55. Furthermore, the Delegation noted that the Namibian Correctional Service also has a Directorate composed of Performance Assurance, Monitoring, and Evaluation responsible for the annual inspection of correctional facilities.
56. Regarding overcrowding of prisons and improving the prisoners' detention conditions, the Delegation learned that the Namibian Correctional Service does not necessarily face a problem of overcrowding. However, despite the large population density, the Delegation noted no correctional facility in the northern regions. This leads to potential overcrowding in correctional facilities in neighbouring areas.
57. The delegation was informed that, unlike the practice in other jurisdictions, the Namibian Correctional Service is responsible only for convicted and sentenced inmates. Prisoners remanded and awaiting trial are under the custody of the police in Police Holding Cells. However, in very few cases, at-risk remand prisoners awaiting trial may be under the custody of the Namibian Correctional Service. This leads to acute overcrowding in police Holding Cells and, in some cases, very unsanitary conditions.
58. The Delegation was informed that the Namibian Correctional Service has implemented Community Service Orders to reduce the inmate population. Thus far, it has implemented the Community Service Orders concept in 46 courts out of the total 71 courts in the country, with plans to roll it out to 5 courts within the subsequent quarter (July to September 2023).
59. The Delegation also learned that the Capital Projects Five Year Strategic Plan proposes constructing two more correctional facilities within the next five years (Oluno Correctional Facility and Windhoek Correctional Facility). The purpose is mainly to have correctional facilities that adhere to the principles of human rights and the Offender Risk Management Correctional Strategy, adopted by the Namibian Correctional Service in 2010. Despite the large population density, it is also meant to address the non-availability of correctional facilities in the northern regions.
60. Regarding whether there is special treatment of vulnerable groups in prisons, particularly women, pregnant women and those with children, persons affected



by HIV, and people with disabilities, the Delegation was informed that in the Namibian Correctional Service, women inmates are held separately from male inmates. Pregnant women receive the same health treatment as those in the public. Women with children are kept in separate cells, each with their children. Regarding inmates with HIV, the Delegation was told that confirmed positive cases are provided special high-protein meals, while those with severe symptoms are housed at the facilities' sickbays.

61. Regarding medical facilities provided to detainees and measures taken to improve detainees' health condition in custody, the Delegation learned that all correctional facilities have clinics operated by healthcare personnel such as Doctors, Nurses, Health Programme Officers, and Pharmacists. The Namibian Correctional Service healthcare is also provided, in line with the Namibian Correctional Service Health Policy, which was developed in collaboration with the United Nations Organisation on Drugs and Crime.
62. On the prevalence rate of HIV/AIDS in prisons and whether prisoners living with HIV/AIDS have access to anti-retroviral drugs, the Delegation learned that the prevalence rate amongst inmates in the Namibian Correctional Service is 2.1%. As of 31<sup>st</sup> March 2023, the prevalence in numbers was (Male: 507); (Female: 38). Concerning measures to curb the spread of HIV/AIDS in prisons, the Delegation was informed about HIV testing and linkage to care, HIV Medication (ARV); Post Exposure Prophylaxis (PEP) to those that are exposed to HIV risk; Condom provision on release; and Voluntary Medical Male Circumcision (VMMC).
63. Regarding recreational and rehabilitation program facilities for prisoners, the delegation learned that rehabilitation programs for inmates are delivered by the Offender Risk Management Correctional Strategy (ORMCS). This evidence-based strategy comprises risk and needs assessment, placement in responsive rehabilitation programs, case management, unit management, and security classification. The ORMCS also makes provision for delivering programs and case management by qualified psychological counsellors and social workers. The strategy is complemented by teachers, artisans, vocational structures, religious officers, etc. In addition, the psychosocial rehabilitation programs are supplemented by recreational activities such as sports, arts and crafts, and other support programs such as educational and vocational training.
64. Concerning requirements for Institutions and CSOs to visit prisons and places of detention and visitation rights of prisoners, the Delegation learned that sentenced inmates are visited on Fridays to Sundays. In contrast, un-sentenced or remand detainees are seen Mondays to Thursdays. The time for visits is between 08h00 and



15h00. In addition, NGOs are allowed to visit correctional facilities on request and approval.

## Field visits

### Windhoek Klein Correctional Centre (Female)

65. The delegation visited the Female Correctional Center in Windhoek, which has a facility capacity of 170. The inmate population during the visit was 116 adults and five infants.
66. Prevalent offences include 45 Murder; 13 theft, 9 fraud; 8 dealing with drugs, 8 obstructing the course of justice, eight assault GBH, and 7 rape cases.
67. The Delegation observed that there were 5 Management services, Chaplaincy services, and Medical Services with nursing personnel (1 Registered Nurse, 1 Enrolled Nurse, and 2 Health Assistants). The Delegation also noted that a Clinic at the facility operates daily, including weekends and public holidays. For secondary and tertiary Medical care, referrals are made to State hospitals.
68. The Delegation also observed that the Centre was still following COVID-19 Protocols at the entrance, and there was a declaration of contraband. The environment was spotless, with a clean kitchen and utensils; well-ventilated rooms usually accommodate four inmates. At the time of the visit, however, there were 5 inmates per room due to fumigation of parts of the facility.
69. The Delegation noted that inmates were allowed to bring their television, and there are rehabilitation and vocational programs, including tailoring, arts and crafts (basket weaving), and baking. However, the Delegation noted no recreational facilities for the inmates.
70. The Delegation spoke with some inmates, who expressed various challenges, including needing more counselling sessions to deal with psychological problems. The Delegation noted cases of murder, drugs, and trafficking of persons.
71. The overall impression of the Delegation is that the female detention facility seemed very modern and up-to-date regarding best practices on detention conditions for women, except that there are no recreational facilities, nurseries, or educational facilities for toddlers.

### **Male Windhoek Correctional Facility**

72. The Delegation also visited the Male Windhoek Correctional Facility, which was highly secured with no contact visits. The delegation noted isolation cells, a recreational facility, access to phones with a time limit, a kitchen with the inmates baking and cooking fresh bread, and medical services.
73. The Delegation noted that the Facility was overcrowded, old, and required reconstruction/renovation.

### **Police Holding Cells**

74. The Delegation noted that the convicted persons in the Correctional Centres were in better condition than persons in the Holding Cells, which were overcrowded at the time of the visit. Specifically, the Delegation noted small cells with some inmates still awaiting trial for one year, four months, fourteen days, two months, and three months, respectively. The Delegation expressed concerns that people may stay for an unduly long period in the custody of the police until conviction and sentencing.
75. Challenges expressed by some of the inmates include the limited provision of water; no testing for COVID-19 and screening for HIV/ AIDs, leading to exposure; no medical facility or medical inspection; and a non-nutritional diet (meat and Pap, almost every day).
76. Generally, the Delegation noted a need to review the system, as there is a concentration of power and authority in the hands of the police, which could also increase allegations of torture.
77. Furthermore, the Holding Cells are not equipped to keep women for too long, and there is no facility for women, babies, or pregnant women. The conditions seemed very unsanitary, with inmates sleeping on bare mattresses on the floor.

### ***Freedom of Expression and Access to Information (Article 9 of the African Charter)***

78. The Delegation learned that the Constitution of Namibia guarantees freedom of expression, including for members of the press and media. The Delegation also learned that the Government established an Information Commission, which will



be functional by the end of 2023, and appointed an Independent Media Ombudsman to regulate the affairs of the media. Furthermore, the Delegation was informed that there is media freedom, with Namibia ranking No.1 in Africa and 24<sup>th</sup> globally.

79. The Delegation noted the country's lack of Whistle-blower protection, hate speech, cyber-harassment, and data protection.

***Freedom of Association and Peaceful Assembly (Articles 10 and 11 of the African Charter)***

80. The Delegation was informed that Namibia's Constitution recognises the citizens' freedom to association and assemble peacefully and without arms. Concerns were raised about the 1989 Public Gatherings Proclamation<sup>4</sup>, which imposes requirements on the planning of public gatherings, as it requires written advance notification, and failure to do so results in punishment by fine or imprisonment.

81. Civil Society Stakeholders expressed concerns about violence meted out to protesters and clamp down by the police on youths who had planned to protest against youth unemployment on Independence Day. They argued that the right to protest was denied, and in the process of dispersing the crowd, there were allegations of undue force by the police.

***Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons (Article 12 of the African Charter)***

82. The Delegation was informed that Namibia has a designated resettlement place established to receive refugees, primarily from other African countries, and a health facility was set up within the premises of the resettlement area to provide health services to refugees.

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<sup>4</sup> The Public Gatherings Proclamation of 21 July 1989 is a South West African Proclamation issued by the Administrator-General of South West Africa shortly before Namibia's first democratic elections took place, to replace some repressive South African laws that were repealed in anticipation of the election. It remains in force in independent Namibia until it is changed by Parliament or declared unconstitutional by a Namibian court. It is a Law that restricts individuals from holding, presiding, officiating at, or addressing a public gathering unless they give duplicate written notices at least 3 days before the gathering. This law requires advance notification to police of certain public gatherings involving more than 20 persons. [http://www.lac.org.na/laws/summaries/Public\\_Gatherings.pdf](http://www.lac.org.na/laws/summaries/Public_Gatherings.pdf)



83. Specifically, the Delegation noted that Namibia hosts thousands of asylum seekers and refugees residing in the Osire Refugee Settlement, located in Osire, between Otjiwarongo and Gobabis. It was also noted that while the Government has established a system to protect the rights of refugees, asylum seekers, and stateless persons, they are not permitted to move freely within the country, and those residing in the settlement are required to obtain an exit permit to leave, which restricts their freedom of movement.
84. The Delegation also noted challenges concerning birth registration and other civil registration processes that may contribute to statelessness.
85. The Delegation learned that cognizant of the vulnerability of refugees, Namibia adopted the **Refugee Recognition and Control Act, Act No. 2 of 1999**, to provide for the recognition and control of refugees. The Act was also enacted to operationalize some provisions of the United Nations Convention Relating to the Status of Refugees of 28 July 1951, the Protocol Relating to the Status of Refugees (31 January 1967), and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969).

*The Right of citizens to participate in politics (Article 13 of the African Charter)*

86. The Delegation was informed that the Namibian Constitution guarantees political rights for all. However, it was noted that some marginalized groups in the community, including the San Ethnic Group, did not have access to political participation. Concerns were also raised about difficulties encountered by marginalised communities in obtaining government identification cards due to lack of birth certificates or other identification, thus, impeding their social, economic, and political rights to participation.

*The Right to Land and Housing*

87. The Delegation learned that the fundamental rights and freedoms guaranteed in Chapter 3 of the Namibian Constitution are fully enforceable by the superior courts. Regrettably, most internationally recognized economic, social, and cultural rights are not guaranteed in the Namibian Constitution as rights per se. Instead, these rights are relegated to mere policy aspirations in the form of unenforceable directive principles of State policy in Article 95 of the Namibian Constitution.



88. The Delegation was informed that 70% of the Namibian population live in shacks, and there are many homeless people with dwellings but no formal houses. The Delegation also learned about the increasing incidence of eviction of long-term farm workers who had been living and working on such land over generations, resulting in homelessness.
89. Furthermore, the Delegation was informed that, in 2018, the Namibia Statistics Agency revealed that white Namibians and foreigners own 27 million hectares of the available 39 million hectares (i.e., 70.1% of freehold agricultural (commercial) land in the country). In October 2018, the government, with the involvement of CSOs and other stakeholders, convened the 2<sup>nd</sup> National Land Conference, which adopted 60 resolutions after a critical review of land reform since independence. In 2019, the President appointed a Presidential Commission of Inquiry into the Claims of Ancestral Land Rights and Restitution as part of the outcomes of the 2<sup>nd</sup> National Land Conference. The Commission's report was released in January 2021. However, progress in the implementation of the Report has been plodding.

### *Right to Employment*

90. The Delegation was informed that the Constitution of Namibia recognises the right of individuals to be free from forced labor unless it is required as a consequence of a sentence or order by a court. The minimum wage is regulated under the 2007 Labour Act, and the Minister for Labour has the power to issue wage orders to decide the remuneration and working conditions for employees in a particular industry or area after considering the recommendations of the Wage Commission.
91. The Delegation noted the country's alarmingly high youth unemployment rate and challenges in addressing the number of street children and their reintegration into schools. This alarming number has a negative impact on the right to primary education.
92. The Delegation learned that Namibia's unemployment has been consistently high for over a decade. The last official figures are from 2018, when the overall unemployment rate stood at around 33%, while youth unemployment was close to 50%. With tens of thousands of young job seekers entering the labor market yearly, this figure has undoubtedly risen, particularly during the COVID-19 crisis, from 2020-2022.





93. The Delegation was informed that Namibia's overall unemployment rate is estimated at 40-45% and over 50% among the youth.

### *Right to Health and Access to Health Care*

94. The Delegation was informed that access to adequate health care and services, including sexual and reproductive health and related information, remains challenging, especially in rural areas. This is exacerbated by conditions of extreme poverty and evidenced by the alarming rate of child/infant and maternal mortality.

### *Maternal and neonatal health services*

95. The Delegation was informed that Namibia's maternal and neonatal health services are provided through the Reproductive Health Program as components of Primary Health Care.

96. The Delegation learned that various management structures and initiatives have been established at the national and regional levels to coordinate these programs, including the Maternal, New-born, and Child Health Management Committee, Technical Working Groups, Maternal and Perinatal Death Review Committee (RMNCH) Scorecard and campaign for accelerated maternal mortality reduction. A Child Survival Strategy has also been developed, and neonatal mortality rate, infant mortality rate, and under-5 child mortality have all declined over the last five years.

### *Health financing*

97. The Delegation was informed that Namibia's healthcare system combines public and private financing. The public system provides services to most of the population. It is predominantly funded through general taxation, while the private healthcare system, which offers comprehensive or partial healthcare coverage, is mainly financed through employee and employer contributions. Namibia spends approximately 7% of its national budget on health and social services, which is generally the highest expenditure after education.

98. The Delegation learned that the Ministry of Health and Social Services (MoHSS) is the leading implementer and provider of public health services, with a four-tier



system: outreach points to clinics and health centers, district hospitals, and intermediate and referral hospitals. Faith-based organizations and civil societies also provide health services in the regions for the MoHSS on an outsourcing basis.

### *Nutrition program*

99. The Delegation was informed that key strategies implemented by the Nutrition Program include maternal, infant, and young child nutrition, growth monitoring, and nutrition promotion, including the Baby Friendly Hospital Initiative. The Micronutrient program focuses on vitamin A supplementation, salt iodization, and iron/folate supplementation to reduce micronutrient deficiencies.
100. The Delegation learned that to respond to the increased reports of stunting and severely malnourished children, the MoHSS has trained 251 Community Health Workers (CHWs) who are now supporting caregivers of infant and young child feeding practices as well as growth monitoring and promotion in all 14 regions.

### *Sexual reproductive health*

101. The Delegation was informed that the goal of the National Policy on Sexual, Reproductive, and Child Health (2013) is to attain the highest possible standard of sexual, reproductive, and child health by providing equitable, accessible, and affordable health and nutrition information and services. One of the Policy's guiding principles is "*non-discrimination and gender equality.*"
102. The delegation learned that Namibia has also started integrating services to improve efficiency. For example, the Epako Clinic in Gobabis was a successful pioneer in becoming one of the first integrated clinics for HIV and sexual reproductive health, introducing the 'one nurse, one patient, one room' model.
103. The Delegation learned that the right to Abortion is restricted in terms of the Abortion and Sterilization Act 1975. Under Section 3 of the Act, it is limited to pregnancies that result from rape or incest; and where the pregnancy poses a threat to the physical and mental health of the mother and child, subject to the certificate by a medical practitioner.
104. The Delegation was informed that the Deputy Minister of Health and Social Services tabled a motion in the National Assembly to jumpstart a national discussion on legislative reform on abortion. The Parliamentary Committees on Constitutional and Legal Affairs held public meetings on abortion in 2021. The



Delegation learned that the Government will continue with stakeholder consultations on possible reform to the Abortion and Sterilization Act, 1975 (Act No. 2 of 1975).

### *Right to Education*

105. The Delegation was informed that compulsory education starts at the primary level 6. Primary education consists of 7 years, from Grade 1 to Grade 7, to prepare children for secondary education. The Delegation learned that the Namibian Government introduced free primary education in 2013.
106. The Delegation noted that some stakeholders expressed the lack of education facilities as a serious concern. There are concerns related to dilapidated education facilities in rural communities and poor urban settlements, which are not conducive physically and mentally to learning. The limited access to education for poor communities, especially marginalized groups and people from informal settlements, was also concerning, compounded by a need for more data and statistics relating to enrolment rates.
107. The Delegation noted that, according to the 2020 Namibia Higher Education Statistical Yearbook, among the total of 66 656 students enrolled in higher education programs in 2020, female students represented 66 percent, which amounted to 43,941. Likewise, the number of female students in higher education was 43,941, almost twice that of their male counterparts, 22,715. The 2022 Global Gender Gap Report further placed Namibia among the highest-ranked African countries in educational attainment.

### **Rights of Women, Children, Older Persons, and Persons with Disabilities**

#### *Women*

108. The Delegation noted that as a signatory to the Maputo Protocol, Namibia has ongoing programs to protect women's rights. Several Governmental and non-governmental initiatives promote gender equality and female empowerment. Women's rights are also enshrined in the Namibian Constitution. Furthermore, the Married Persons Equality Act, the Combating of Rape Act, and the Combating of Domestic Violence Act are all designed to protect women's rights, particularly in marital and domestic contexts.



109. Regarding health and reproductive rights, the Delegation noted that the Namibian Government has implemented various health initiatives targeting women. Ongoing public awareness campaigns on reproductive health and rights include family planning, safe motherhood, and preventing and managing sexually transmitted infections.
110. The Delegation learned that the MoHSS has developed a Clinical Handbook on integrated services to survivors of sexual and GBV. All healthcare workers are trained in the Handbook. This handbook is designed to help healthcare providers respond appropriately through easy steps and suggestions, including awareness about GBV; first-line support for intimate partner violence and sexual assault; additional clinical care after sexual assault, including emergency contraception; further support for mental health; and intimate partner violence and family planning.
111. Moreover, the Delegation noted that programs have been implemented in economic empowerment to increase women's access to economic resources. These programs aim to reduce poverty and promote women's financial independence, focusing on women in rural areas. For instance, the Government has introduced microfinance and skills development programs for women, acknowledging their crucial role in the national economy.
112. The Delegation learned that in its efforts to secure victim participation in proceedings involving allegations of torture, the Government officially opened the renovated victim-friendly court for GBV at the Windhoek Magistrates Court. This courtroom facility is an example of an institutional mechanism designed to eradicate GBV, protect victims, and specifically ease the burden for victims testifying in court. Victims are kept- physically separate from their abusers to enable them to freely and openly testifying, without intimidation and without causing unnecessary secondary trauma.
113. The Delegation also learned that to provide effective, comprehensive services to victims of sexual and GBV, the Government, through the Ministry of Safety and Security, established 17 GBV Protection Units in 14 regions that adopt a multi-sectoral approach. The critical ministries involved are Gender Equality and Child Welfare, which are responsible for psycho-social support services; Safety and Security, which is responsible for Protection Services; and Health and Social Services, which is responsible for care and treatment services.
114. In addition, the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) allows complainants to apply for protection orders in cases of violence,



harassment, and threats of violence, including domestic violence. The protection order may be sought at the same time as the criminal charges are laid. Protection can also be obtained through civil law measures. In this instance, the complainant obtains an interdict (a court order directing a perpetrator to stop a particular behavior). Furthermore, media houses and police officials are also prohibited from divulging the names of complainants. This is to protect the privacy and identity of those needing protection.

115. On the current statistics of women in political positions and other leadership positions in different sectors of Government and the private sector, the Delegation learned that:

- i. 55% of the Namibian executive branch (The President, Vice President, Prime Minister, Deputy Prime Minister, Ministers, and Deputy Ministers) positions are occupied by Women;
- ii. Women occupy 44% of the National Assembly seats, while women occupy 14.3 % of the National Council seats;
- iii. Women occupy 26.4 % of Heads of Foreign Missions (Ambassadors and High Commissioners);
- iv. There are 2 Lady justices seated in the Supreme Court; 36.4% of judges of the High Court are women, and 59.3% of magistrates are women; and
- v. There are 12 female Chief Executive Officers of State-Owned Enterprises, and a substantial number of women are leading the boards of state-owned enterprises as board members and board chairs. The Board chair of the National Oil Company is a woman.

116. Regarding harmful traditional practices in the country, the Delegation was informed about the prevalence of child marriage.

### **Children**

117. On the rights of children, the Delegation learned that the Namibian Constitution recognizes children's rights under Article 15. The Child Care and Protection Act also aligns with the provisions of the African Children's Charter and the United Nations Convention on the Rights of the Child (CRC).

118. The delegation learned about the After-School Centre, a government initiative to strengthen Namibian children's social well-being. The Centre focuses explicitly on disadvantaged children, such as children working and



living on the streets and children from economically challenged families and communities in Windhoek. The Centre was born out of realizing the plight of the children working and living on the streets of Namibia, and it's fully administrated under the auspices of the Ministry of Gender Equality, Poverty Eradication, and Social Welfare.

119. The Delegation was informed that the objectives of the Centre, amongst other things, are to strengthen the social well-being of Namibian Children; equip children with life skills to cope with day-to-day challenges; reintegrate children working and living on the streets and those from disadvantaged backgrounds back with families and communities; provide early intervention strategies aimed at keeping children off the streets; and provide Psycho-Social Support Services (PSS) to all children accessing the facility.
120. The Delegation was told that the Centre can cater to up to 500 children at a time. These children are usually between 6 and 18, although some older children also use the facilities. The Centre is also ideal for children with single working parents who need someone to take care of the children after school. Some of their activities include arts and crafts, sports (e.g., wrestling, gymnastics, soccer, and Netball; cultural activities, music, drama; HIV/AIDS Awareness Club; and computer class (basic).
121. The Delegation learned that the program aims to integrate street children into formal and informal schooling. The children are integrated into boarding schools and are provided with material support. During school holidays and exit weekends, staff members of the MoHSS conduct regular home visits to support the families and street visits to ensure that the children do not go back to the streets.
122. The Delegation was told that an Interim Night Shelter also admits children between 6 and 18 years old. The shelter provides various overnight services to the children while they await reintegration into society (community, families, and educational institutions). The children also benefit from all the activities offered at the Shelter.
123. The Delegation was informed that the Income Generating Project was created to assist the parents of street children. Parents can generate their income by making use of the project. These, in turn, empower them to take care of their children, thus preventing these children from going back to the streets. The project also allows children to generate income at a lower level. This prevents them from going to the streets and begging for money.



124. The Delegation noted that Namibia is finalising the draft Child Justice Bill after addressing long-standing policy issues about the age of criminal responsibility and measures. The bill is currently being drafted by the legislative drafters, who are working with the Law Reform Directorate to align the draft bill with the Child Justice Policy. The Ministry of Justice intends to re-submit the Child Justice Bill to the Cabinet Committee on Legislation before the end of 2023.
125. While the Delegation noted national legislation and strategies to protect the rights of children, including the National Agenda for Children (2018- 2022), the Education Sector Policy for the Prevention and Management of Learner Pregnancy (2009), the National Safe Schools Framework (2018), amongst others, they however expressed concern about their implementation. The Delegation notably raised concern about underreporting violence against children, especially sexual violence. The Delegation learned that this is informed by the fact that close relatives usually commit sexual violence, and according to social norms, these cannot be reported for fear of retribution or ostracisation.

### *Older Persons and Persons with Disabilities*

126. The Delegation was informed that Article 10 of the Namibian Constitution prohibits discrimination based on social and economic status but does not explicitly list age as a prohibited ground of discrimination. In its report on the status and living conditions of older people in Namibia, the Ministry of Health and Social Services reported that an alarming 21 percent of older persons had experienced physical abuse, 7 percent had experienced sexual abuse, and 18 percent had been emotionally abused.
127. The Delegation learned that the law does not restrict the rights of persons with disabilities to participate in civic affairs. Still, access to public venues is needed to ensure their ability to participate in civic life. Moreover, the Government does not provide information and communication on disability concerns in accessible formats. Due to this, societal discrimination against people with disabilities remained prevalent.

### *Indigenous Populations and Communities*

128. The Delegation was informed that the Indigenous Peoples of Namibia include the San, the Ovatjimba, Ovatue, and Ovahimba, and potentially several other peoples, including the Damara (#Nūkhoen) and Nama.
129. The Delegation was informed that the Cabinet approved the Division of Marginalised Communities (formally San Development Program. Cabinet Decision No: 25th/29.11.05/001). It was established in 2005 by the Office of the Prime Minister to cater to the needs of San communities living in deplorable conditions and adverse poverty. In 2009, the Cabinet also approved the inclusion of the Ovatue and Ovatjimba communities (Cabinet Decision No: 9th/28.05.09/005) due to their adversely challenging situations.
130. Hence, the program was renamed the “Directorate San Development Program” within the Office of the Prime Minister. The Division was housed in the Office of the Prime Minister, then in the Office of the President, and now in the Presidency, under the Ministry of Gender Equality, Poverty Eradication, and Social Welfare (MGEPESW), headed by a Member of Parliament (MP), as a Deputy Minister of Marginalised Communities.
131. The Delegation learned that the Government of Namibia, through the MGEPESW, conducted a Situational Analysis of the Livelihood of Indigenous Minorities in Namibia during the first and second quarters of 2022. A Cabinet Committee on Land and Social Issues (CCLSI) commissioned the situational analysis following its discussion of a draft White Paper on the Rights of Indigenous Minorities in Namibia. The CCLSI further directed that MGEPESW consults all different stakeholders who have been affected by the recommendations of the Situational Analysis Report.
132. The Delegation was informed that the MGEPESW had scheduled a two-day consultative workshop with all affected stakeholders, to be held on 22-23 June 2023, to discuss the recommendations of the Situational Analysis Report. Subsequently, the Situational Analysis Report and Draft White Paper will be presented to the CCLSI, Cabinet, and Parliament for deliberations. It is hoped that this leads to the drafting of appropriate legislation to address the situation.





133. In addition, the Delegation was told that the Ministry of Labour, Industrial Relations and Employment Creation (MLIREC), through the Employment Equity Commission, is at an advanced stage of finalising the amendment of the Affirmative Action Act (Act 29 of 1998) to include the Marginalised (San, Ovatie, and Ovatjimba) Communities, as designated groups under Section 18 of the Act, for preferential treatment in terms of all employment decisions.
134. The Delegation noted that the MGEPEWSW, through the Division on Marginalised Communities, continues to advocate for the full implementation of the Inclusive Education Policy, whereby Grades 1-3 will be taught either through the mother tongue or a predominant local language. Although the Inclusive Education Policy encourages children to be taught in their mother tongue in the early grades, including Early Childhood Development, this has proven difficult because Indigenous Minorities' languages are not documented. No curriculums are developed except for the Ju/hoansi language in Tsumkwe East.
135. The Delegation learned that to meet Namibia's obligation to the International Conventions, Instruments, and Protocols, the Government of Namibia became part of the United Nations Permanent Forum on Indigenous Issues, and representatives attend the Forum annually in New York to discuss pertinent issues related to the rights of the Indigenous Minorities, in line with the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP).
136. The Delegation noted that in addition to the Forum, Namibia commemorates the International Day of the World Indigenous Peoples on the 9<sup>th</sup> of August yearly, mainly underscoring the rights of the Indigenous Minorities. The Delegation was informed that most indigenous communities participate in the celebration.
137. The Delegation was informed that, through the Inter-Ministerial Committee on Human Rights and Humanitarian Laws, Namibia had submitted two reports (2013 and 2020, respectively) as part of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
138. In bringing about any form of development to the Indigenous Minorities, the Delegation was informed that the communities are consulted and participate in executing projects and programs that affect them on the principles of free, prior, and informed consent.

### *Extractive Industries and Environment*

139. The delegation learned that oil and green hydrogen had been discovered in Namibia. Extractive Industry Transparency International is pushing for the Government to join the Transparency Initiative to disclose information on contract data and implement its main stipulations. This matter is currently under consideration.

## RECOMMENDATIONS

### **I. To the Namibian Government**

140. Whereas the Delegation commends the Government of Namibia for its overall observance of the rule of law and democratic principles based on respect for fundamental human and peoples right, considering the findings of the Delegation, the Commission calls on the Government of Namibia to adopt the following recommendations, to ensure more effective promotion and protection of human rights in the country. More generally, to:

- i. Continue institutional reform efforts in various sectors of Government to ensure sustainable development and lasting peace;
- ii. Work with national and international development Partners to provide human rights training to the Judiciary, Magistrates, and Lawyers in the country, especially on the interpretation of provisions of the African Charter, as well as other relevant human rights instruments, in their judgments, as well as, the use of Jurisprudence of the Commission, the African Court and the African Committee of Experts on the Rights and welfare of the Child in domestic cases; and
- iii. Develop Government policy on collecting relevant data and reliable statistics related to various areas of human rights.

### **Monitoring the implementation of recommendations**

141. Follow up on and implement the recommendations made to it by national institutions, regional and international bodies. Fast-track progress



toward the full operationalisation of the inter-ministerial committee for monitoring the implementation of international obligations and commitments.

## **Legislative and other measures to implement the provisions of the African Charter**

142. Expedite ratification of:
- i. The Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights;
  - ii. The Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons;
  - iii. The Kampala Convention; and
  - iv. OPCAT
143. Also:
- i. Expedite the drafting and enactment of all pending laws for the enjoyment of human rights in the country and
  - ii. Implement the Repeal of Obsolete Laws Act of 2018, aimed at repealing obsolete and outdated colonial laws in the country.

## **Promotion and protection of human rights**

### *Prohibition of Torture and cruel, inhuman, and degrading treatment*

- i. Expedite finalization and enactment of the prohibition of torture and the anti-Torture Bill; and
- ii. Establish an independent oversight mechanism to investigate allegations of torture and bring the perpetrators to justice after ratifying the OPCAT.

### *Prisons, Conditions of Detention & Policing*

- i. Develop recreational and educational programs and activities in the Female Correctional Centre;
- ii. Expand the Female Correctional Centre to include nurseries or



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- educational facilities for toddlers;
- iii. Renovate or reconstruct the Male Correctional Centre to address overcrowding;
  - iv. Establish an Independent Police Oversight body to investigate allegations of violations committed by the Police and other law enforcement Officers;
  - v. Adopt alternative sentencing for petty crimes/offences, including Community Orders, to reduce prison population;
  - vi. Build dedicated Juvenile Facility or construct separate Units for Juvenile Offenders to ensure they are separated from adults, in line with the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and other regional and international standards;
  - vii. Ensure that Juvenile Offenders have proper detention facilities to ensure their rehabilitation and reintegration into society as responsible adults, including educational and recreational facilities;
  - viii. Fastrack the construction of an additional correctional facility in Northern Regions to alleviate overcrowding in Oluno Correctional Facility;
  - ix. Consider an in-depth reform of the Police Holding Cells as the current structure encourages concentration of powers to the police and is not favorable for citizens awaiting trial, pregnant women, and women with babies;
  - x. Conduct a comprehensive review of existing policies and procedures regarding Police Holding Cells. Identify gaps and areas where improvements are needed to address overcrowding and ensure compliance with international standards. Revise these policies to incorporate clear guidelines on capacity limits, sanitation, ventilation, access to medical care, and other essential aspects;
  - xi. Assess the physical infrastructure of holding cells and determine if they are suitable for accommodating detainees humanely and dignifiedly. If overcrowding is an issue, consider measures such as expanding existing facilities, constructing new ones, or providing alternative detention options to alleviate overcrowding;
  - xii. Explore alternatives to detention for non-violent offenders, where appropriate. Implement pre-trial release, diversion programs, or community-based supervision for individuals who do not threaten public safety. This can help reduce the number of detainees in Police Holding Cells and alleviate overcrowding;
  - xiii. Establish effective monitoring mechanisms to assess the conditions in Police Holding Cells regularly. This can involve independent oversight



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- bodies, human rights organizations, or designated inspection teams. Regular monitoring helps identify issues, provides accountability, and ensures compliance with international standards;
- xiv. Ensure that new suspects are appropriately screened for HIV-AIDs and COVID-19 to avoid contamination in the Police Holding Cells and
  - xv. Use the Luanda Guidelines on the Conditions of Arrest, Police Custody, and Pre-trial Detention in Africa while training prison officers and reviewing laws and policies relating to arrest, police custody, and pre-trial detention.

### *Freedom of Association and Assembly*

- i. Enact Legislation protecting human rights defenders in the country;
- ii. Recognize the status of human rights defenders or any person working for the promotion and protection of human rights, as recommended in the Grand Bay and Kigali Declarations and the UN Declaration on Human Rights Defenders; and
- iii. Consider amending the 1989 Public Gatherings Proclamation Law, which imposes requirements on the planning of public gatherings.

### *Freedom of Expression and Access to Information*

- i. Protect the right to freedom of expression by reviewing the law requiring police approval for peaceful protest and demonstrations;
- ii. Adopt Whistle-blower protection and hate speech laws as well as cyber-harassment or data-protection legislation in line with the Commission's Declaration of Principles on Freedom of Expression in Africa and other relevant treaties and soft laws;
- iii. Investigate allegations of discrimination and hate speech; and
- iv. Ensure journalists' professional training, including ethics and human rights training.

### *Rights of Refugees, Asylum Seekers, Migrants, and Internally Displaced Persons*

- i. Take measures to ensure refugees' and migrants' freedom of movement in the country.



### *The Right of Citizens to participate in politics*

- i. Ensure inclusiveness in political participation, including marginalised groups in the community, such as the San Ethnic Group.

### *Right to Housing*

- i. Develop strategies and policies to address the incidences of homelessness arising from the eviction of farm workers who have been living and working on such land over generations;
- ii. Ensure people have access to low-cost housing, in particular, vulnerable groups such as older people, persons with disabilities, women, and children; and
- iii. Allocate adequate budget and resources required for urgently implementing the Resolutions of the 2<sup>nd</sup> National Land Conference and the Recommendations of the Presidential Commission of Inquiry into Claims of Ancestral Land and Restitution.

### *Right to Employment*

- i. Develop programs to alleviate poverty and provide employment opportunities for the people of Namibia; and
- ii. Intensify initiatives to address youth unemployment in the country, mainly providing life skills and professional training to the youth as revenue for empowerment.

### *Right to Health and Access to Health Care*

- i. Continue to take necessary steps to increase budget allocation to the healthcare sector and services and
- ii. Create a conducive environment to ensure the exercise of the right to health for all citizens without discrimination, including people living in rural areas.

### *Right to Education*

- i. Take measures to increase the enrolment rate of children in school;
- ii. Include the African Human Rights System in the curriculum of schools and, especially in Universities;



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- iii. Provide adequate resources and ensure inclusiveness in schools with facilities to allow access for persons with disabilities;
- iv. Ensure access to education for poor communities, especially marginalized groups and people from informal settlements;
- v. Promote sensitization campaigns to enable citizens to understand the rights and benefits of education, especially as it relates to the girl child and
- vi. Invest in teacher education and continuous training, school infrastructure, and learning materials for all schools nationwide.

## *Rights of Women, Children, Older Persons, and Persons with Disabilities*

### *Women*

- i. Ensure the effective implementation of the laws and strategies protecting women from GBV, including the Combatting of Domestic Violence Act, amongst others, and devise strategies to influence attitudinal change and cultural practices that perpetuate GBV; and
- ii. Promulgate or publish the Bill on Domestic Violence in the official gazette for public debate.

### *Children*

- i. Develop strategies to influence attitudinal change and cultural practices that perpetuate violence against children, especially by family members; provide counselling services and reporting mechanisms for victims.

### *Older Persons and Persons with Disabilities*

- i. Adopt legislation that specifically addresses the rights of older persons and persons with disabilities;
- ii. Adopt measures that prohibit discrimination against older persons and persons with disabilities; and
- iii. Ensure that all public spaces are equipped to assist and are accessible to persons with disabilities; in particular, construct user-friendly establishments (including ramps and other features) to facilitate access for people with physical disabilities.

### *Indigenous Populations and Communities*

- i. Enact national legislation recognizing and protecting the rights of indigenous/marginalized people in Namibia.

### *Extractive Industries and Environment*

- i. Set up international standards for resource governance and also put in place legal and institutional measures to regulate the extractive process and ensure citizens benefit from the approach, ensure that there is a value addition to the country's natural resources, and build capacities of the citizens to work at different levels of the extractive process; and
- ii. Utilise the State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights, and the Environment of the Commission as a reference when updating or reviewing national legislations related to extractive industries to ensure that its laws align with regional and international human rights standards. These Guidelines can also serve as a framework for reporting obligations under Article 62 of the African Charter for issues relating to extractive industries and the environment.

## **II. To other stakeholders**

- i. CSOs and other stakeholders should continue their efforts to promote and protect human rights in the country, working in collaboration with the Government.



## **Annex 1: Mission Program**

### **PROGRAM**

#### **PROMOTION MISSION TO NAMIBIA**

**12 TO 16 JUNE 2023**

#### **Day 1 - Monday 12 June 2023**

- Courtesy visit to the Minister of Justice

#### **Day 2- Tuesday 13 June 2023 (Country Club Resort at 9 a.m.)**

- Meeting with the Minister of Foreign Affairs
- Meeting with the Ministry of Education
- Meeting with the Ministry of Home Affairs & Immigration
- Meeting with the Ministry of Health & Social Services
- Meeting with the Ministry of Mines and Energy
- Meeting with the Ministry of Information and Communications Technology
- Ministry of Gender Equality, Poverty Eradication, and Social Welfare

#### **Day 3- Wednesday, 14 June 2023 (Country Club Resort at 9 a.m.)**

- Meeting with the Society of Advocates of Namibia
- Meeting with the National Society for Human Rights of Namibia
- Meeting with the African Human Rights and Justice Protection Network
- Meeting with the Media Institute for Southern Africa
- Meeting with the Namibia Press Agency
- Meeting with the Legal Assistance Centre
- Institute for Public Policy Research (IPPR)
- Namibia Revolutionary Transport Union (NARETU)
- Metal Allied Namibian Workers Union (MANWU)
- Meeting with FesMedia Africa
- Namibian NGO Forum Trust
- Civic +264
- Other CSOs/NGOs

**Day 4, Thursday, 15 June 2023**

- Meeting with Official Opposition (Popular Democratic Movement)
- Meeting with the Chief Justice
- Meeting with UN Agencies (UNESCO; UNDP; UNICEF; UNFPA; WHO; and UNCHR);
- Meeting with the Office of the Ombudsman

**Day 5- Friday 16 June 2023**

- Meeting with the Commissioner-General of Correctional Service
- Field Visit to Windhoek Central Correctional Facility
- Visit Klein Windhoek Police Holding Cells
- Debriefing Lunch with the Honourable Minister of Justice
- Debriefing Meeting with the Honourable Minister of International Relations and Cooperation and Deputy-Prime Minister
- Press Conference

**END OF MISSION**

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