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Namibia*

The present report is a summary of six stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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

I. Background and framework

A. Scope of international obligations

1. The Office of the Ombudsman (The Ombudsman) stated that Namibia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) but was yet to ratify the Optional Protocol to CAT (OP-CAT).² It also stated that Namibia still needed to sign and ratify the International Convention for the Protection of all Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the amendment to article 8 paragraph 6 of the International Convention on the Elimination of all Forms of Racial Discrimination; and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR).³

B. Constitutional and legislative framework

2. The Ombudsman stated that in light of its obligations in relation to CAT, Namibia needed to take legislative and other measures to criminalize torture and establish a national preventative mechanism.⁴

3. With regard to the promotion and protection of children's rights, the Ombudsman welcomed the Draft Child Care and Protection Bill which, once adopted, would replace the outdated Children's Act of 1960. It stated that that Bill embodied all the existing international commitments including by criminalizing trafficking of children. The Ombudsman called on Namibia to move swiftly to enact that bill.⁵

4. Namibia's National Society for Human Rights (NSHR) stated that all human rights were indivisible, interrelated and interdependent, and therefore deplored the fact that economic, social and cultural rights, as well as civil and political rights were not placed on the equal footing with other categories of rights. It also stated that civil and political rights were entrenched under Chapter 3 of the Constitution, while the majority of the provisions related to economic, social and cultural rights were listed under Chapter 11 of the Constitution, and, as such, could not be directly invoked in the national courts.⁶ NSHR recommended that Namibia amend its Constitution to place economic, social and cultural rights, as well as civil and political rights on equal footing with other rights.⁷

5. NSHR expressed concern that, in the absence of their formal incorporation into domestic laws, with the exception of the Geneva Conventions, treaties, to which Namibia was party, could not be enforced by the courts.⁸ NSHR recommended that Namibia systematically domesticate, as a matter of priority, all human rights treaties to which it was party.⁹

6. Breaking the Wall of Silence (BWS) noted that Namibia signed and ratified CAT and encouraged it to adopt legislation to specifically and fully implement that instrument.¹⁰

7. NSHR stated that despite recommendations by CAT, Namibia has not integrated the specific definition of the crime of torture into its penal legislation, in accordance with the definition contained in article 1 of CAT.¹¹ NSHR recommended that Namibia enact a law defining the crime of torture in accordance with CAT and integrate that definition into its substantive and procedural criminal law system.¹²

C. Institutional and human rights infrastructure

8. NSHR noted the establishment of the Office of the Ombudsman¹³ and recommended that Namibia strengthen both the institutional and operational capacity of that office by providing it with adequate human and financial resources, so that it might be equipped to fulfill its mandate effectively and efficiently.¹⁴

D. Policy measures

9. The Ombudsman indicated that it has initiated the development of a national human rights action plan so as to rationally establish human rights goals and link human rights to the national planning and development agenda. The following step in the development process was the base line study which enquired considerable resources. It stated that the Government should be encouraged to take ownership of the process and make the necessary resources available for the successful development and implementation of the plan.¹⁵

II. Promotion and protection of human rights on the ground

A. Cooperation with human rights mechanisms

Cooperation with treaty bodies

10. The Ombudsman stated that although Namibia has submitted reports to treaty bodies, it has not complied with all its reporting obligations. It noted, for instance, that with regard to CAT, the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child, only initial reports were submitted and there were significant delays in subsequent reporting. Also, in the case of ICESCR, the initial report was yet to be submitted, as well subsequent reports that were due in 2002 and 2007.¹⁶

B. Implementation of international human rights obligations

1. Equality and non-discrimination

11. NSHR indicated that discrimination against women remained pervasive. It deplored Namibia's non-recognition of customary marriages and the deprivation of the rights of women and children with regard to inheritance and land ownership, as well as the widespread societal discrimination against, and the marginalization of women.¹⁷

2. Right to life, liberty and security of the person

12. BWS indicated that 153 South-West African People's Organization (SWAPO) detainees were officially released as a result of United Nations Resolution 435 and repatriated to Namibia by UNHCR on 4 July 1989 and a further 16 detainees escaped from the "SWAPO dungeons" in a third country and returned to Namibia on 8 August 1989.¹⁸ BWS estimated that 2000 cadres were listed as missing without any account of their whereabouts. It asserted that families of those missing persons had been denied the right to know their fate and whereabouts. Also, those 16 persons referred to above had been denied effective remedy for the inhuman and degrading treatment to which they were subjected, as well as for the false allegations of spying for a third country made against them.¹⁹ BWS stated that the continued denial of the right to know was a crime.²⁰

13. The Ombudsman expressed concerns about the conditions in which detainees were held in police stations and described these conditions as horrendous with most cells extremely overcrowded. The Ombudsman called on Namibia to improve the conditions of detention and to introduce measures to combat overcrowding in detention facilities.²¹

14. The Namibian Women's Health Network (NWHN) stated that during a workshop held in 2008, several young women who were HIV positive informed that they had been sterilized at public hospitals in Namibia without their informed consent. These women were or had been pregnant. NWHN indicated that a fact-finding exercise conducted thereafter in three regions of Namibia revealed that of the 230 HIV positive women interviewed, 40 women indicated that they had been subjected to forced or coerced sterilization. Many of the women interviewed stated that they had signed consent forms but did so under pressure from the doctors and had little choice but to accept the procedure. Some women were asked to sign the forms before they underwent a caesarean section or just after natural child birth. Some women had gone in for post-abortion care and were told that they should agree to the sterilization for that treatment. Some women were misinformed and told that if they did not get sterilized the antiretroviral treatment would not work. A small number of women stated that they were not asked to sign a consent form and only discovered that they had been sterilized when they sought family planning services. NWHN indicated that women who underwent forced sterilization were then fearful of visiting clinics for other treatments, including antiretroviral treatment. It stated that coerced and forced sterilization violated the Constitutional guarantee of equal treatment of women living with HIV and the international and regional instruments to which Namibia was a party.²² NWHN called on Namibia to take remedial action to prevent further sterilization of HIV-positive women without their informed consent.²³

15. The Ombudsman stated that the Combating of Domestic Violence Act of 2003 provided legislative protection against domestic violence for women and children and put in place mechanisms for such protection. However, not all women and children had access to these mechanisms. In terms of the Act, only magistrates might issue protection orders. There were a number of towns in Namibia that did not have resident magistrates and in some cases the nearest magistrate was more than 100 km away, with no public transport to easily reach a magistrate. The Act also provided for applications for protection order outside court hours or court days, but there was no mechanism to consider such applications. The Ombudsman called on Namibia to install magistrates in all towns, or provide alternative measures to allow all victims of domestic violence to access to the protection of the Act.²⁴ NSHR recommended that Namibia, as a matter of priority, put an end to widespread violence against women.²⁵

16. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) stated that in Namibia corporal punishment was lawful in the home. The Children's Act No. 33 of 1960 confirmed that parents had a right to punish and discipline their children. There were discussions of a Child Care and Protection Bill in order to prohibit all corporal punishment in child rearing.²⁶

3. Administration of justice, including impunity and the rule of law

17. NSHR expressed concern by Namibia's failure to promptly and impartially investigate and prosecute those responsible for past and present acts of torture or cruel, inhuman or degrading treatment. It stated that Namibia failed to prosecute the members of the security forces accused of torture or cruel, inhuman or degrading treatment of the Caprivi secessionists.²⁷

18. NSHR noted that Namibia had failed to deal with gross pre-independence and post-independence human rights violations and that Namibia had persistently rejected repeated calls by NSHR to institute a truth and reconciliation commission (TRC) to address such

violations.²⁸ NSHR recommended that Namibia establish, without any further delay, an independent national TRC to address past gross and systematic human rights violations.²⁹

19. BWS stated that from 1960 to 1989, the SWAPO committed atrocities in third countries. It also stated that trumped-up charges of spying for a third country was levelled against innocent cadres of the SWAPO liberation movement during Namibia's liberation struggle, which resulted in thousands of them being tortured and imprisoned by SWAPO in exile. BWS further stated that the impact of the atrocities has caused endless suspicion, disunity, distrust and hatred among Namibians, and expressed concern that the continued tension was likely to lead to ethnic strife and civil disturbances.³⁰

20. BWS called on Namibia to investigate the fate and whereabouts of those persons who disappeared while under SWAPO's care in exile; take responsibility and effect remedy to the plight of the SWAPO ex-detainees; and create a platform for national dialogue on establishing the truth about past human rights violations.³¹

21. The Ombudsman stated that the administration of justice was subjected to systemic problems of delay in courts whereby criminal cases took more than 4 years before coming to trial and judgments were unavailable for years in the High and Supreme Court. Unending postponements of criminal trials, sometimes longer than a year, in the lower courts added to the delays. The right to appeal or review was seriously affected through delays in producing the transcripts of trials and unduly delays in preparing the appeal/review records of proceedings by clerks. The Ombudsman called on Namibia to develop an administration of justice policy that would address the systemic problems of delays in courts.³² NSHR added that the right to a fair and speedy trial continued to be undermined by the fact that numerous indigent trial-awaiting detainees remained in police detention due to the lack of legal aid from the cash-stripped Directorate of Legal Aid. It recommended that Namibia introduce measures to reduce the huge accumulation of court cases resulting *inter alia* in illegal prolonged pre-trial detention, which violated the right for defendants to be tried within a reasonable time.³³

4. Right to privacy, marriage and family life

22. NSHR indicated that Namibia did not recognize customary marriages.³⁴

23. Pan Africa International Gay, Bisexual, Transgender and Intersex Association, ARC International and International Gay, Bisexual, Transgender and Intersex Association (JS1) have jointly urged Namibia to repeal all punitive and discriminatory laws that criminalize sexual activity between consenting adults of the same sex, in conformity with its international human rights obligations.³⁵ They stated that at the time of independence, Namibia inherited Roman-Dutch Law which criminalized anal sex between two men infringing on the rights of persons with different sexual orientation.³⁶

5. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life

24. NSHR stated that although women make up more than 50 percent of Namibia's population, they remained under-represented or unrepresented in the decision making process.³⁷ It recommended that Namibia ensure the rights of citizens to effective access, on a non-discriminatory basis, and to participate in the conduct of public affairs, which included the right to form or join the political parties of their choice as well as to voice criticism regarding the functioning or non-functioning of governmental ministries, agencies and other organizations concerned with public affairs.³⁸

25. NSHR stated that high-ranking members of the SWAPO Party and state officials routinely attacked it and those exercising their freedom of opinion and expression.³⁹ NSHR recommended that Namibia undertake prompt, thorough and transparent investigation of all

human rights violations, in particular attacks against human rights defenders and journalists, in order to create a safe and enabling environment in which human rights defenders and media workers could carry out their activities without unlawful hindrances, including the use of hostile propaganda and other acts against independent human rights organizations in the country.⁴⁰

6. Right to work and to just and favourable conditions of work

26. The Ombudsman indicated that Namibia was experiencing a huge unemployment problem. In 2004, the rate of unemployment was 36,7 percent and was estimated in 2010 to be about 50 percent.⁴¹ It noted Namibia's support to large projects in the South of the country which stood to generate thousands of employment opportunities, seasonal as well as non-seasonal, i.e. the establishment of a date and grape farm at the Naute dam, and the development of a Desert Star Studios and Motion Picture Resort on the banks of the Orange River. There was also a huge employment opportunity being created in the West through the development of a large retirement village as well as several uranium mines. The Ombudsman called on the Government to continue prioritizing the creation of productive employment.⁴²

27. NSHR stated that trade unions that were not affiliated with the ruling SWAPO Party continued to be marginalized and that the independent trade unions were the main targets of hostility coming from the authorities.⁴³

7. Right to social security and to an adequate standard of living

28. On the issue of poverty, the Ombudsman indicated that there was income inequality with the richest 10 percent of the population earning 128 times more than the poorest 10 percent of the population. NSHR stated that Namibia was rated one of the world's worst income distributors among its population.⁴⁴ The Ombudsman also stated that some of the causes of poverty included the lack of decent employment opportunities, Namibia's poor record in creating such opportunities and Namibia's market orientated policies that relied on the private sector and foreign investments which had not yielded the desired results.⁴⁵

29. NWHN noted that a project carried out in 2008 and 2009 revealed that young women felt unable to access family planning services if they were unmarried because of the judgemental attitudes of service providers. Also, despite the Government's policy on the availability of emergency contraception, it was not available in all clinics. NWHN recommended that Namibia ensure that young people and their parents had access to comprehensive education on sexuality and reproduction and that all women had access to modern contraceptive methods and emergency contraception, regardless of age and marital status.⁴⁶

30. With regard to abortion, NWHN indicated that it was legal to have an abortion in Namibia under certain circumstances - in cases of danger to a woman's life or physical or mental health, in cases of foetal malformation and in cases of rape and incest -⁴⁷ but access to safe abortions was almost non-existent. In 2009, the Government prepared a draft reproductive health policy to which NWHN and other civil society groups made recommendations on the gaps in that policy, including the need to introduce vacuum aspiration methods for post-abortion care, as recommended by WHO and the need to offer abortion services.⁴⁸ The Government was yet to finalize that policy. NWHN stated that Namibia's failure to implement the abortion law and to provide abortion-related care was a violation of women's rights.⁴⁹ NWHN also stated that the lack of accessible family planning and legal abortion services had led to clandestine and unsafe abortions and a high incidence of abandonment of new born babies.⁵⁰ It recommended that the new reproductive health policy address abortion-related care, both with regard to introducing vacuum

aspiration and medications for post-abortion and legal abortion care and with regard to ensuring that women have easy access to legal abortions as permitted by law.⁵¹

8. Right to education

31. The Ombudsman stated that while there was a constant increase in the enrolment in primary school education, there remained a worrying trend of not retaining the number of enrolled primary school learners in secondary school education. It also stated that the Namibian Constitution guaranteed free and compulsory primary education. However, parents were required to contribute to the school development fund, pay for stationary, uniforms, school books, transport costs and examination fees (parents who were unable to afford the school development fund could apply for exemption).⁵² The Ombudsman called on Namibia to abolish the school development fund for primary education and introduce legislative, administrative and other measures to compel children to remain in attendance in school, thereby reducing the school drop out rate; introduce steps towards progressively achieving free secondary and higher education; encourage a culture of respect for human rights from an early age by introducing human rights education in schools; expand the program of vocational education to accommodate those who had dropped out of school as well as those whose primary or secondary education did not provide them with the skills required by the urban labour market.⁵³

9. Minorities and indigenous peoples

32. NSHR indicated that even though the law provided that all indigenous groups should be allowed to actively participate in decisions affecting their lands, cultures, traditions and allocations of natural resources, indigenous groups, in particular, the San (Bushman) people, still faced systematic and widespread exclusion and exploitation. It also stated that a major issue for minority groups in Namibia was to achieve political recognition.⁵⁴ It recommended that Namibia, as a matter of priority, bring to an end all and any systematic discrimination, marginalization and exclusion of indigenous and minority groups in the country, including especially but not exclusively the San, Nama and Baster peoples.⁵⁵

10. Migrants, refugees and asylum-seekers

33. NSHR indicated that the rights of refugees and asylum seekers were not listed under Namibia's Bill of Rights. It called on Namibia to institute proper procedures in order to comply with article 3 of the Refugee Convention to enable refugees to apply for residence in cases where substantial grounds existed for believing that they would be in danger of being subjected to summary execution, torture or cruel, inhuman or degrading treatment or enforced disappearance if expelled, returned or extradited to another country.⁵⁶

III. Achievements, best practices, challenges and constraints

N/A

IV. Key national priorities, initiatives and commitments

Specific recommendations for follow-up

34. The Ombudsman stated that it was unaware of any steps that might have been taken to disseminate the concluding observations and recommendations of the various treaty bodies to which Namibia has reported, as well as any action that has been taken to implement these recommendations.⁵⁷

35. NSHR stated that Namibia had failed to implement the recommendations made by CAT and that the cases of alleged enforced disappearances of former members of the then ruling SWAPO Party in exile should be promptly and impartially investigated as contemplated under article 12 of CAT.⁵⁸

V. Capacity-building and technical assistance

N/A

Notes

- ¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council. Two asterisks denote a national human rights institution with “A” status).

Civil society

- BWS Breaking the Wall of Silence, Windhoek, Namibia;
 GIEACPC Global Initiative to End all Corporal Punishment of Children, London, United Kingdom;
 JS1 Joint submission by Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association; Arc International, Geneva, Switzerland; and International Lesbian, Gay, Bisexual, Trans and Intersex Association, Brussels, Belgium;*
 NSHR Namibia’s National Society for Human Rights, Windhoek, Namibia;
 NWHN The Namibian Women’s Health Network, Namibia.

National human rights institution

The Ombudsman The Office of the Ombudsman, Namibia, Windhoek, Namibia.**

- ² The Ombudsman, p. 1, para. 1.1.
³ The Ombudsman, p. 1, para. 1.2.
⁴ The Ombudsman, p. 1, para. 1.1.
⁵ The Ombudsman, p. 3, para. 8.
⁶ NSHR, p. 2, para. 8.
⁷ NSHR, p. 5, para. 21.
⁸ NSHR, p. 2, para. 8.
⁹ NSHR, p. 5, para. 22.
¹⁰ BWS, p. 3.
¹¹ NSHR, p. 3, para. 13.
¹² NSHR, p. 5, para. 25.
¹³ NSHR, p. 1, para. 4.
¹⁴ NSHR, p. 5, para. 23.
¹⁵ The Ombudsman, p. 4, para. 11.
¹⁶ The Ombudsman, p. 2, para. 2.
¹⁷ NSHR, p. 3, para. 10.
¹⁸ BWS, pp. 1–2.
¹⁹ BWS, p. 2.
²⁰ BWS, p. 3.
²¹ The Ombudsman, p. 3, para. 7.
²² NWHN, p. 2.
²³ NWHN, p. 4.
²⁴ The Ombudsman, p. 4, para. 9.
²⁵ NSHR, p. 5, para. 28.
²⁶ GIEACPC, p. 2.
²⁷ NSHR, p. 3, para. 13.
²⁸ NSHR, p. 5, para. 14.
²⁹ NSHR, p. 5, para. 26.
³⁰ BWS, pp. 1–2.

- ³¹ BWS, pp. 4–5.
- ³² The Ombudsman, p. 3, para. 6.
- ³³ NHR, p. 5, para. 24.
- ³⁴ NSHR, p. 3, para. 10.
- ³⁵ JS1, p. 2.
- ³⁶ JS1, p. 1.
- ³⁷ NSHR, p. 3, para. 10.
- ³⁸ NSHR, p. 5, para. 27.
- ³⁹ NSHR, p. 4, para. 15.
- ⁴⁰ NSHR, p. 5, para. 30.
- ⁴¹ NSHR estimated the unemployment rate to be “in excess of 51 percent” (See NSHR, p. 4, para. 16).
- ⁴² The Ombudsman, p. 2, para. 4.
- ⁴³ NSHR, p. 4, para. 16.
- ⁴⁴ NSHR, p. 4, para. 17.
- ⁴⁵ The Ombudsman, p. 2, para. 4.
- ⁴⁶ NWHN, p. 3.
- ⁴⁷ NWHN, p. 3.
- ⁴⁸ NWHN, p. 3.
- ⁴⁹ NWHN, p. 3.
- ⁵⁰ NWHN, p. 3.
- ⁵¹ NWHN, p. 4.
- ⁵² The Ombudsman, pp. 2–3, para. 5.
- ⁵³ The Ombudsman, pp. 2–3, para. 5.
- ⁵⁴ NSHR, p. 4, para. 18.
- ⁵⁵ NSHR, p. 5, para. 28.
- ⁵⁶ NSHR, p. 4, para. 19.
- ⁵⁷ The Ombudsman, p. 2, para. 3.
- ⁵⁸ NSHR, p. 4, para. 14.
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