

NAMIBIA

Civil society report for the Review of the Second Periodic Report of Namibia (CAT/C/NAM/2) at the 59th session of the Committee Against Torture

Submitted by:

Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre (LAC)



Joined by:

Women's Action for Development (WAD)
Citizens for an Accountable and Transparent Society (CATS)
Southern African Christian Initiative (SACHI – <http://sachi-sadc.org>)
Breaking the Wall of Silence (BWS)
Women's Leadership Centre (WLC)
Namibian Women's Health Network (NWHN)
Katutura Youth Enterprise Centre (KAYEC)
Church Alliance for Orphans (CAFO)
Sister Namibia
Ana-Jeh San Trust
David Kasume Community Development Organisation
Business Hub Namibia
NAWIB
Nam-YCW
Khomas Homeless Development Organisation
Kingdom Power
ACPCN/NM4J
Victims 2 Survivors
Queensland Project
Restoring the Dignity of our People
Autism Association of Namibia
Namibia Pension Funds Protection

NAMIBIA – Joint Civil Society Report with CCPR Centre and SALC

With the support of:



Southern Africa Litigation Centre (SALC)



Centre for Civil and Political Rights (CCPR Centre)

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I. Introduction

This report is an extract of the joint report prepared by civil society organisations under the auspices of the Namibia Non-Governmental Organisations Forum (NANGOF trust) and drafted by the Legal Assistance Centre (LAC) in reply to the List of Issues on Namibia adopted by the UN Human Rights Committee¹ in view of the review of the Second Periodic Report,² scheduled at the 116th session of the Human Rights Committee in March 2016.

a. Joining organisations

NANGOF Trust is the umbrella network for all non-governmental organisations (NGOs) in Namibia. Its role is to advocate for pro-poor government policies, build linkages and networks for NGOs and provide capacity strengthening support to member organisations. NANGOF Trust has up to 200 direct member NGOs and 500 indirect member NGOs, community based organisations (CBOs) and faith based organisations (FBOs).

LAC is a public interest law centre founded in 1988 that collectively strives to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia. The LAC currently has four major units: (1) The Social Justice Project; (2) the Gender, Research and Advocacy Project and (3) the Land, Environment and Development Project. The LAC is based in Windhoek.

The organisations presenting this report are as set out above.

b. Methodology

The NANGOF trust with the support of the Centre for Civil and Political Rights (CCPR Centre) and the Southern Africa Litigation Centre (SALC) convened a workshop attended by a broad variety of civil society organisations working in the various areas addressed by the International Covenant on Civil and Political Rights (ICCPR). The workshop provided input on the List of Issues raised by the Human Rights Committee, which input is collated in this response. In addition, more in depth information was obtained from interviews with stakeholders and desk review when necessary.

c. Contact details

The Legal Assistance Centre drafted and coordinated the input for the submission of this report.

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¹ CCPR/C/NAM/Q/2

² CCPR/C/NAM/2

II. Violence against women, including domestic violence

a. Gender Based Violence

Civil society commends the State party on all its activities undertaken to raise awareness of domestic violence, for enacting legislation and for the efforts made to implement the Combating of Domestic Violence Act. However there would appear to have been no decrease in the incidents of domestic violence, the murders of intimate partners and general violence against women and children, which indicates that there is a need for additional measures to address this problem.

There seems to be inadequate application of the rules on bail in some instances, with persons who have committed repeated rapes or made threats to the victims who reported the GBV cases being released on bail when they actually pose a danger to society.

There are still a number of problems with the services provided by the GBV Protection Units, which do not consistently provide a sensitive response to GBV victims who attempt to report cases. Persons who report cases more than once are stigmatized as ‘problem cases’, with the victim being made to feel like the wrongdoer. Most GBV Protection Units do not have sufficient social worker services attached, and most do not have shelter facilities available for GBV victims.

It is telling that the State party’s response to the List of Issues of the Human Rights Committee focuses primarily on reports of the 2nd National Conference on Gender Based Violence.³ Money and energy repeatedly spent on a huge national conference could better be spent on ensuring meaningful implementation of the existing conference recommendations, the National Plan of Action on GBV, and the laws which have been put in place to combat GBV.

The State party failed to respond to the concern about the accessibility and enforceability of the Combating of Domestic Violence Act in areas far from magistrates and police services. Circuit courts and community courts could be utilized in such instances.

In 2012 NAMPOL reported 1397 cases of rape and attempted rape, which is probably an underestimate of the actual extent of rape in Namibia. It is suspected that child rape – which consistently accounts for about one-third of all reported rapes over the last few years – is particularly likely to be underreported.

Recommendations:

The State Party should:

- i) Increase outreach to men and boys in combating GBV;
- ii) Provide rehabilitation services for both victims and perpetrators of GBV and their families;
- iii) Increase GBV sensitization and training on GBV-related legislation in schools, incorporated to the life skills curriculum;
- iv) Focus on concrete implementation of the National Plan of Action on GBV rather than holding further national conferences;
- v) Make more use of specialised prosecutors who liaise closely with police to ensure proper consideration of bail issues and to increase conviction rates on GBV cases;
- vi) Improve the response of GBV Protection Units to victims and provide more shelters and support services to victims.

³ The written replies of Namibia to the List of Issues adopted by the Human Rights Committee are available [here](#).

b. Harmful practices

Civil society does not agree with the State party's reply to the Human Rights Committee's List of Issues that there are no harmful practices being practiced in Namibia. Although the names of these practices may not be as suggested by the Committee, there are credible reports of harmful practices such as various sexual initiation customs. These practices are often condoned as being accepted under customary law. The Child Care and Protection Act 3 of 2015 (passed by Parliament but not yet in force) contains the following provision on harmful cultural practices:

Harmful social, cultural or religious practices

226. (1) A person may not subject a child to social, cultural and religious practices which are detrimental to his or her well-being.

(2) A person may not give a child out in marriage or engagement if such child does not consent to the marriage or engagement or is below the minimum age for marriage contemplated in section 24 of the Marriage Act, 1963 (Act No. 25 of 1961).

(3) A -

(a) child requires the consent of the minister responsible for home affairs in order to marry; and

(b) person below the age of 21 years also requires the consent of his or her parent, parents or guardian in terms of section 10(10) of this Act in order to marry.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(4) The Minister may, after consultation with interested parties including traditional leaders, by regulation prohibit any social, cultural or religious practice, including but not limited to any form of sexual initiation, which, in the Minister's opinion, may be detrimental to the well-being of children.

(5) A regulation contemplated in subsection (4) may provide that any person who contravenes or fails to comply with a provision of a regulation, commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

This is a laudable beginning, but it will require a great deal of effort to implement in practice. It must be remembered that it is often difficult for people – particularly children - to speak out about such issues for fear of rejection by community and family. Therefore, intensive awareness-raising and the support of traditional authorities will be necessary to implement this provision meaningfully.

There are currently no statistics available on how many women and girls are subjected to harmful social and cultural practices.

Recommendations:

The State Party should:

- i) Embark on intensive education awareness-raising in targeting communities on harmful cultural practices and their rights in this regard, and on the links between such practices and GBV, public health, the spread of HIV;
- ii) Sensitise police and magistrates to the ways in which specific harmful practices may constitute rape or domestic violence as well as contravention of the Child Care and Protection Act (once it comes into force), and provide support for victims who attempt to speak out about such violations.

c. Prosecution and sanction of rape

The State party has indicated the relevant provisions of the Combating of Rape Act and outlined a number of factors that hamper the successful conviction and sentencing of rape violators, but without indicating measures to reduce these limiting factors.

Data on attrition and conviction rates in rape cases was published by the Legal Assistance Centre in 2006 (based on a national sample of court files), but there is no indication that government regularly compiles or releases such data, which make it impossible to monitor progress on these issues.

The Labour Act 11 of 2007 prohibits discrimination on a range of grounds and specifically addresses sexual harassment in the workplace (although omitting any mention of non-sexual forms of harassment which cannot be classified as discrimination). Sexual harassment cases are rarely reported, for fear of victimization and loss of employment. There are anecdotal reports of sexual harassment of women, including in the police force, Namibia Defence Force, the mining sector and construction industries, where some fear to report such incidents for fear of being seen as not being fit for a “man’s job” or fear of further harassment and stigmatization.

The Labour Act 11 of 2007 envisages Codes of Good Practice for key workplace issues (section 137), but no Code of Good Practice on Sexual Harassment has been issued.

Recommendations:

The State Party should:

- i) Compile and release regular statistics on prosecutions, withdrawals and convictions in rape and other GBV-related criminal cases; put into place victim support measures to discourage case withdrawals;
- ii) Consider effective mechanisms to implement the protections against sexual harassment in the workplace, and ensure that the victims thereof are provided with adequate complaint mechanisms and appropriate protection after making such complaints.

III. Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment

The State has informed that the **Prevention and Combating of Torture Bill** will be tabled in parliament during early 2016.

The Legal Assistance Centre documents **cases of excessive force and abuse of power by the police force**, the most recent referring to the physical assault of a client by 9 police officers following an allegation made against client that he had stolen a laptop. The allegation was subsequently withdrawn and client was never criminally charged. The Legal Assistance Centre has another open case in its records relating to the killing of a youth by police officers in 2014.

During 2013 there were **continuous reports from a San women’s grassroots group about the abuse of powers by police officials in Omega 1, in the Zambezi Region**. A charge of rape was also laid against one of the police officers. This charge was later withdrawn ostensibly because of a fear of reprisal given that the police officer had access to the complainant in her hospital room where she was allegedly threatened. It is conceded that the Internal Investigation Directorate initiated an investigation and indeed a response was received from the Office of the Regional Commander in the Zambezi Region.⁴ It appears though that no proper follow up was done since the recommendation by the Regional Commander that the accused police officer be transferred has not been implemented with the community confirming that he is still stationed at

⁴ By letter dated 22 November 2013.

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Omega 1. In addition, the Regional Commander recommended an awareness campaign be held at Omega 1 police station to make it clear what is expected from a police officer *vis a vis* the public. The community reports that they are not aware of any such training or campaign taking place.

There is anecdotal evidence that **police officers abuse their powers in relation to sex workers** with reports in the media suggesting that sex workers are arrested and only released once they have sex with the arresting officer.⁵

The State party has failed to adequately address the issue of **transitional justice** and so redress human rights abuses of the past. The fate and whereabouts of the estimated number of 4000 Namibians who disappeared at the hands of the then liberation movement, now the ruling party, SWAPO, remains unknown. The families live in trauma and uncertainty and are denied the right to know the truth about the fate and whereabouts of their loved ones. There are also practical concerns relating to the inability to settle important legal issues dealing with inheritance, property and marital status. The inability to obtain information about their loved ones aggravates their trauma and is submitted to be a form of continuous torture and denial of their right to know the fate and whereabouts of their loved ones. In addition, the survivors continue to be discriminated against and are unable to equally and fairly benefit from the programs that are designed to assist the war veterans.

Recommendations:

The State Party should:

- i) Expedite the promulgation of the Prevention and Combating of Torture Bill and ensure that prosecutors and the police force are provided with training in order to properly administer the Act;
- iii) Ensure investigations are carried out into reports of human rights violations by the police and that police officers are held accountable for such violations through disciplinary and criminal proceedings meeting international human rights standards. This would apply equally to members of the municipal City Police force;
- iv) Initiate an investigation by the Internal Investigation Directorate or another independent body to establish the identity of the perpetrators (police or defence force) accused of torture in the Caprivi treason trial and subsequently suspend and ensure that perpetrators are brought to justice in a fair trial;
- v) Ensure police respect and protect the rights of all individuals irrespective of their profession, sexual orientation, sex or any other ground of discrimination, including through continued and concerted human rights training of police officers;
- vi) Elicit public opinion around the proposed decriminalisation of sex work with a view to considering the decriminalisation of same;
- vii) Make public statistics relating to the matters investigated by the Internal Investigation Directorate and the results of such investigations;
- viii) Consider whether an independent body is required to replace the Internal Investigation Directorate. Dependent on the results of such investigation, this could be the Office of the Ombudsman if decentralized and sufficiently resourced;
- x) Investigate the fate and whereabouts of the missing persons who disappeared while under SWAPO's care in exile;
- xi) Take responsibility for and provide remedies for the SWAPO ex- detainee question;

⁵ One such report: "Sex workers spill the beans" Namibian Sun 23 October 2013.

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- xii) Create a platform for national dialogue on establishing the truth about past rights violations and so promote healing.

IV. Elimination of slavery, servitude and forced labour and measures to protect minors

It is correct that the Ministry of Labour and Social Welfare is tasked with the oversight of the Labour Act and its regulations and that the current Labour Act indeed has provisions aimed to protect children against harmful work. However, the problem would appear to be in the implementation of this oversight function. Reports obtained from grassroots civil society organisations indicate that **children still work under harsh conditions**, in many instances not attending school, and that the labour directorate is insufficiently staffed to properly monitor and enforce compliance with the law.

This would also apply to the situation of **farm workers and domestic workers**. Although Namibia has legislation setting out minimum wages in these two cases, reports from grassroots CSOs indicate that these are not always complied with and sanctions are not enforced against the offending employees. It must also be noted with concern that the minimum wage legislation has resulted in a number of employees losing their employment due to an inability or unwillingness by some employers to abide by this legislation.

From the information available to the Legal Assistance Centre, there have been a **few isolated cases of forced labour and trafficking**, but no indication of links to organised crime. Studies have also turned up only isolated cases, many involving family members from other countries coming to Namibia and doing chores for food and board – sometimes exploitatively and sometimes not. It will be good to have a legal framework in place in order for any potential cases to be dealt with in a uniform manner.

Recommendations:

The State Party should:

- i) Ensure that the Labour Directorate is sufficiently staffed and sufficiently resourced to adequately supervise and investigate all child labour issues, ideally creating a unit specifically trained and sensitized to deal only with child labour issues;
- ii) Provide annual reports by the Ministry of Labour and Social Welfare to all stakeholders, including civil society, on the situation of child labour, farm and domestic workers and detailing follow up on outstanding concerns;
- iii) Provide accessible avenues for farm workers and domestic workers for the reporting of violations and ensure protection against possible victimisation;
- iv) Expedite the proposed legislation relating to trafficking.

V. Pre-trial detention

Pre-trial detention remains unacceptably lengthy, partly due to the length of time that it takes to investigate the matter. Judicial records confirm that many criminal trials currently in the courts relate to incidents of two or more years ago. In addition there have been reports of the courts not allowing postponements for further investigations when such investigations have been inordinately lengthy and this has resulted in a number of serious charges being withdrawn.

The 48 hour rule is indeed entrenched in our constitutional framework and the courts have confirmed this consistently in their judgments. There is a concern, however, that a number of towns do not have a permanent sitting magistrate which can cause delays in terms of the 48 hour rule. This is compounded by the challenges of ensuring that there are sufficient vehicles at all police stations to ensure that accused persons can be transported to a magistrate in good time.

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There are practical barriers to the rights to appeal or review which are cause for concern. In the experience of the Legal Assistance Centre and a number of its clients, there continues to be an inordinate delay in preparing courts records for appeal to be used by appellants and no proper mechanism for them to expedite or enforce the preparation of the court record.

According to sources at the Office of the Ombudsman, trial awaiting and convicted detainees are kept separate at correctional facilities with a few isolated exceptions. However, accused who are convicted for a period of no longer than three months are for the most part returned to the police cells where they are kept together with trial awaiting detainees while serving out their sentence, which sentences are generally remanded to two months.

There is currently no utilization of electronic bracelets. Many accused are unrepresented due to a lack of a public defender's programme and are not able to properly formalize a bail request. There is insufficient effort to encourage magistrates to assist the accused in this regard. Where bail is granted, the sum is very often too high for the accused to pay, resulting in overcrowding in the holding cells.

There are currently no provisions accommodating persons with any kind of disabilities when coming into contact with the judicial system.

Recommendations:

The State Party should:

- i) Ensure that the police force is properly equipped to facilitate the transfer of an arrested person to a magistrate at all times;
- ii) Ensure the provision of a dedicated person at all courts to deal only with the preparation of the court records for appeal;
- iii) Consider utilizing law graduates to act as public protectors in less serious criminal cases for a limited period of time after their admittance;
- iv) Engage with magistrates and prosecutors to encourage them to consider bail in each and every case of an unrepresented accused and to assist such accused in understanding the procedure involved;
- v) Engage with organisations assisting persons with disabilities in order to put in place a considered policy to properly accommodate persons with disabilities when coming into contact with the judicial system.

VI. Treatment of persons deprived of their liberty

There appears to be a conflict with the statistics in paragraph 86 of the State replies to the List of Issues adopted by the Human Rights Committee⁶ relating to the Oluno Correctional Facility. The statistics do not reflect the reports of overcrowding presented from civil society sources in that the State party notes that their official bed capacity is sufficient but simultaneously reports overcrowding in 6 facilities.

It is reported that there are a number of vacancies relating to medical personnel in the correctional services. This understaffing also results in medical assistance not being consistently available within the facilities, 24/7. A court commissioned report prepared by the Legal Assistance Centre in 2011⁷ on standards within the facilities indicated that while official menus and diets are balanced and reviewed, the reality is that the

⁶ The written replies of Namibia to the List of Issues adopted by the Human Rights Committee are available [here](#).

⁷ S Ganeb v Ministry of Safety and Security and One other – case number A160/2011.

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foods are not always available or provided. This is challenging in particular when certain foods are required for medical conditions and can have a detrimental effect on the response to HIV/AIDS.

Condoms are still not provided in correctional facilities due to the State party's stance that their provision will encourage the commission of a crime, namely sodomy. Anecdotal evidence suggests that desperate inmates use plastic bags to protect themselves instead.

There is no possibility of conjugal visit in Namibian prisons.

There have been no reports in the media or otherwise of correctional services inspections by visiting justices. The Office of the Ombudsman conducts regular visits and we commend the recent visit to the Windhoek correctional facility by the current First Lady.

The Correctional Services Act 9 of 2012 was already promulgated on 1 January 2014.

The Ministry of Justice is in the process of rolling out community service orders as an alternative form of punishment for minor offences according to the reports to the access to justice monitoring committee under the National Human Rights Action Plan.

We recognize the efforts of the Correctional Services to move from punishment to rehabilitation and reintegration and the State party is encouraged to continue on this trend.

Recommendations:

The State Party should:

- i) Make every effort to ensure that all vacancies for medical personnel within the Correctional Services is filled, and that they are tasked with monitoring the quality and quantity of food and the provision of medicine. Compulsory monthly reports to the Commissioner of Prisons should be effected;
- ii) Consider providing condoms in prisons for purposes of public health concerns;
- iii) Ratify the OP-CAT as a matter of urgency;
- iv) Expedite the roll out of community service orders and undertake a capacity building exercise amongst stakeholders. Government should ensure a bigger pool of supervisory bodies by making it attractive to supervise offenders.

VII. Refugees and asylum seekers

There has been no official reply to the issue raised regarding the position of asylum seekers with a well-founded fear of irreparable harm based on their sexual orientation. The Commissioner of Refugees made a comment against a gay Ugandan male who was going to be deported. The deportation was blocked by the court and subsequent negotiations ensured that the client is now a student in Canada.⁸ It could be argued that currently the legislation offers protection to people who are threatened by imminent harm on the basis of being members of a "particular social group," which is defined in the legislation as one of bases for protection. Therefore, homosexuals are members of a "particular social group" entitled to asylum if they are persecuted for their sexual orientation. However, the State has not made that clear.

The State party has entered a reservation in respect of the 1951 Geneva Convention which then requires refugees and asylum seekers to remain in Osire Refugee Camp unless they have specific permits to leave the

⁸ According to Norman Tjombe, client's attorney of record.

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camp. The argument for this is that the State needs to “control the refugees and asylum seekers for their own protection”.

Recommendations:

The State Party should:

- i) Consider amending the Namibian Refugees (Recognition and Control) Act No. 2 of 1999 which stipulates the criteria and the grounds to be considered for asylum seekers in the country on an individual basis, by clarifying that a “particular social group” could include a group persecuted based on their sexual orientation;
- ii) Devise a system whereby refugees and asylum seekers can move freely within Namibia while still obtaining the requisite support.

VIII. Juvenile justice

Cases of children under 10 years of age who have been prosecuted for an offence

It is regretted that Namibia offers no reply to the Human Rights Committee’s question relating to whether children under the age of 10 years are or have been prosecuted for an offence, and also whether the constitutional protection against detention for children under the age of 16 is respected.

Juvenile detainees

While the State party reports that from the entire population there are only 2 juvenile offenders currently detained, it is respectfully denied that this is accurate based purely on the high amount of juvenile cases pending before the Namibian courts and the backlog of such cases. Data on file at the Legal Assistance Centre shows that in 2010, 319 juveniles were charged with criminal offences and in 2011, 281 juveniles were charged. According to a report published by the Namibia Statistics Agency, 18 juveniles were detained in 2014.⁹ The reason why there has suddenly been a drop in the number of children in conflict with the law is not clear.

Table 4.2 Age of offender at the time of Arrival

Age Group	2013		2014	
	Count	%	Count	%
<17	2	0.4	18	0.9
17 - 19	28	5.2	100	5.1
20 - 21	41	7.6	169	8.6
22 - 25	108	19.9	396	20.2
26 - 30	120	22.1	467	23.8
31 - 40	157	29.0	558	28.5
41 - 50	63	11.6	198	10.1
51 -60	17	3.1	47	2.4
61 - 70	5	0.9	3	0.2
71 +	1	0.2	3	0.2
Total	542	100.0	1,959	100.0

Source: Ministry of Safety and Security.

In the government report to the Committee on the Rights of the Child it stated that:

...in 2009 the Elizabeth Nepemba Juvenile Detention Centre in Kavango Region did not receive enough juvenile inmates to justify full-time operation. It may therefore be modified for other purposes. Children who are incarcerated are put into special sections of the thirteen existing

⁹ Namibia Statistics Agency, *Namibia Social Statistics*, Namibia Statistics Agency, 2014 at 38.

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prisons around the country, where they are isolated from the adult population. These sections are staffed by officers who have received special training on dealing with juveniles. Currently, there is a preference for using local facilities to incarcerate children because in the majority of cases it makes it easier for family members to visit the child.¹⁰

IX. Corporal punishment

The use of corporal punishment in some schools continues despite the fact that its use is prohibited by the Education Act 16 of 2001. The Legal Assistance Centre has received requests for help from parents and sometimes directly from children who are being beaten at school. Text messages complaining about the use of corporal punishment at specific schools are regularly published in the national newspapers as sent in by parents or learners.

There was one recent case to test whether corporal punishment may be used in private schools. This case ruled that corporal punishment may not be used in private schools, although the case is on appeal. The Child Care and Protection Act will outlaw the use of corporal punishment at any registered facility which cares for children (including children's homes, shelters, crèches and day care centres), and in any form of alternative care where the child has been placed in terms of a court order (such as foster care or court-ordered kinship care). The use of corporal punishment as a sentence for crime or a disciplinary measure was prohibited by a 1991 court case; the Child Care and Protection Act provides further clarity by prohibiting usage of corporal punishment in police custody or prison.

The key principle is Article 8 of the Namibian Constitution, which protects human dignity and prohibits "cruel, inhuman or degrading treatment or punishment". In 1991, the Namibian Supreme Court found that Article 8(1) of the Namibian Constitution prohibits corporal punishment by any "organ of state", which would include government schools as well as the administration of corporal punishment to adult and juvenile offenders. This principle was established in the case of: *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State* 1991 NR 178 (SC).

Civil society has worked to disseminate information on the harmful effects of corporal punishment and promote non-violent forms of discipline.

Recommendations:

The State Party should:

- i) Table the Child Justice Bill in parliament without any further delay and take all reasonable steps to ensure that it comes into force and provide sufficient resources for implementation;
- ii) Ensure that the Child Care Protection Act comes into force without any further unnecessary delay by finalizing its Regulations and provide sufficient resources for implementation;
- iii) Ensure that juveniles are not detained with adults whether in holding cells or permanent cells by supplementing the current infrastructure to cater for juvenile detainees;
- iv) Make every effort to minimize the detention of juvenile offenders and rather provide for alternative methods of management;

¹⁰ *First, Second and Third Namibia Country Periodic Reports on the Implementation of the United National Convention on the Rights of the Child and Two Optional Protocols 1997-2008*, Windhoek: Ministry of Gender Equality and Child Welfare, [2009] at 76, footnote omitted.

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X. Sexual abuse of children

The Child Care and Protection Act includes a list of scenarios where a child is considered to be a “child in need of protection”. A child who is a victim of sexual violence/abuse including prostitution would fit within this list. When a report is made, a social worker will investigate the case. This may result in the removal of the child from the situation. The case will be reviewed by the children’s court and the court will have the option to order a range of interventions. Whilst this is a provision that must be implemented, the recognition in the law of the categories under which a child is in need of protection and the specific steps must then follow is a positive step in taking measures to combat the problem. The Child Care and Protection Act will also introduce mandatory reporting for professionals/officials who have duties with respect to children.

There are insufficient government and private accessing counselling services for child victims of sexual violence or abuse. It is civil society’s understanding that children engaged in prostitution are treated as victims and not as offenders.

Civil society implemented a project to improve responses of police and court officials to child witnesses. There was a plan to have this programme incorporated into government structures, however this did not appear to transpire. Measures to deal with vulnerable witnesses are incorporated into law – for example relocating the trial to a less formal setting while the victim gives evidence, rearranging furniture in the courtroom, or adjusting where people stand, allowing a support person to accompany the victim or the option to give evidence from behind a screen or through CCTV if resources are available.

Recommendations:

The State Party should:

- 1) Ensure that GBV-Protection Units and courts have sufficient resources to effectively implement the provisions for vulnerable witnesses.