

NAMIBIA



The NGO Report To the UN Human Rights Committee for its 3rd Periodic Review of Namibia during the 140th Session.

February 2024

Namibia submitted its 3rd period report in Aug 2021. State reports are public and available on the website of the HR Committee and on the Centre's website.

Acknowledgements

This report was mostly compiled from inputs sourced from Namibian civil society organisations and activists during an intensive two-day workshop on 13 - 14 December 2023. Comments and responses were also gathered from organisations and activists who were not able to join the workshop, but who submitted inputs nevertheless. Gratitude is herewith extended to everyone who contributed to this report.

Following organisations contributed to this report:

- The Legal Assistance Centre (LAC)
- The Institute for Public Policy Research (IPPR)
- The Y2K Charity
- The Booming Empowerment Community Project
- The Breaking the Wall of Silence
- The Council of Churches in Namibia (CCN)
- The Palms For Life Fund Namibia
- Reproductive Justice Namibia
- Namibia Diverse Women's Association
- Civil Society Information Centre Namibia (CIVIC +264)
- Namibia Institute for Democracy (NID)

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The production of this report was supported by **Centre for Civil and political Rights, Geneva, Switzerland.**

CIVIL SOCIETY'S RESPONSES TO THE LIST OF ISSUES

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. The draft Ombudsman Bill has still not been finalised and tabled in the National Assembly, as of December 2023, despite being in the pipeline for many years. This means that long standing issues of independence, resourcing and capacity remain concerningly unaddressed. The absence of a strengthened mandate and the lack of resources and capacity continues to undermine and limit the Ombudsman in ensuring Namibia's compliance with constitutional and international commitments to appropriately and adequately protect human rights. The budget of the Office of the Ombudsman is still controlled by the Ministry of Justice, and has not shown substantial increase over the years – consider that in the 2019/20 financial year the Ombudsman was allocated N\$18,472,489¹, while in 2021/22 the Office was allocated N\$18,439,652², which was N\$32,837 less than two years earlier. At the same time, due to resource shortfalls and key staffing shortages, the Ombudsman remains largely unable to give effective life to its environmental protection mandate. Ombudsman Basilius Dyakugha has publicly called for his office to become independent from the Ministry of Justice.³ It is unclear what the timeline for finalisation and enactment of the Ombudsman Bill is. Finalising and enacting the Bill does not appear to be a priority for the Government of the Republic of Namibia.

Recommendations

The State should:

- **Urgent Finalization and Tabling of the Ombudsman Bill:** Prioritize the finalization and tabling of the Ombudsman Bill in the National Assembly without further delay. This is crucial to address longstanding issues related to independence, resourcing, and capacity of the Office of the Ombudsman. A clear and comprehensive Ombudsman Bill will provide the necessary legal framework to enhance the Ombudsman's mandate, ensuring compliance with constitutional and international commitments to protect human rights.
- **Ensuring Independence and Autonomy of the Ombudsman:** Strengthen the effectiveness of the Ombudsman in safeguarding human rights, by granting the Ombudsman's office independence from the Ministry of Justice. This includes financial autonomy, ensuring that the budget of the Office of the Ombudsman is not controlled by any external entity.

¹ https://ombudsman.org.na/wp-content/uploads/2022/08/Namibia_OM_Annual-Report_2020_EN.pdf

² https://ombudsman.org.na/wp-content/uploads/2022/11/Annual-Report-2021_22_compressed.pdf

³ <https://nbcnews.na/node/98815>

- **Financial resource allocation:** Allocate sufficient funds and staff to the Office of the Ombudsman as a matter of priority, starting with a substantially increased budget allocation for the 2024/25 financial year.
- **Human resource:** Prioritize the recruitment and retention of qualified personnel. Adequate staffing levels are essential for the Ombudsman to effectively address environmental protection mandates and respond to human rights concerns.

Anti-corruption measures (arts. 2 and 25)

2. Media reporting on alleged corruption at state-owned entities and agencies has become a daily occurrence, as exemplified by ongoing and continuing coverage of alleged corrupt practices and activities by senior executives at the state-owned National Petroleum Corporation of Namibia (NAMCOR)⁴ at the time of compiling this report. Other public entities that have been continuously plagued by alleged corruption and poor governance over recent years include the Namibia Students Financial Assistance Fund (NSFAF)⁵ and the national rail operator TransNamib⁶, as well as the defence ministry owned August 26 Holdings⁷. Of course, the big on-going corruption scandal, the Fishrot fisheries corruption case from 2019 – which saw the arrest and continuing detention of two Namibian Cabinet ministers and other high placed officials from the state-owned fishing company, Fishcor, along with private sector actors – will see the trial commence in the Namibian High Court in early 2024⁸. The Fishrot case is a case study in how fisheries governance systems and processes were corrupted in order to benefit a handful of individuals connected to the ruling Swapo Party, as well as the ruling party itself⁹. While some arrests have been made and prosecutions will commence in 2024, senior ruling party officials implicated in the alleged corruption remain in office and high positions with no concrete indications from the state, by way of the Anti-Corruption Commission (ACC) or the Prosecutor General’s office, that there will be additional arrests and indictments.
3. Despite the volume of reporting on instances of alleged corruption, there is very little accountability for what, at the very least, can be labelled an entrenched culture of wastefulness and mismanagement across the state sector. The culture of unaccountability and impunity has been publicly questioned and criticised on a number of occasions by Namibia’s Auditor-General Junias Kandjeke over recent years¹⁰.

⁴ <https://www.namibian.com.na/namcor-says-mulunga-fraudulently-paid-n53m-for-tanks-owned-by-govt/>

⁵ <https://neweralive.na/posts/nsfafs-n300m-haunted-house>

⁶ <https://ippr.org.na/wp-content/uploads/2023/05/PTN-22-web.pdf>

⁷ <https://namibian.com.na/military-payments-linked-to-dubai/>

⁸ <https://www.bbc.com/news/world-africa-64526018>

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<https://www.occrp.org/en/investigations/fishing-with-dynamite-the-secret-scheme-that-helped-namibias-president-stay-in-power>

¹⁰ <https://neweralive.na/posts/kandjeke-is-gatvol>

4. Corruption in the public sector primarily centres around the public procurement system, governed by the Public Procurement Act 15 of 2015¹¹, which has been operationalised state-wide since 1 April 2017. This new procurement dispensation has from the beginning been plagued by a culture of non-compliance. For instance, according to section 8(1)(d) of the Public Procurement Act of 2015, all public entities with a procurement function have to produce an annual procurement plan, which, according to section 1.5 of the Public Procurement Guidelines, should be submitted to the Procurement Policy Unit (PPU), in the Ministry of Finance and Public Enterprises, and posted or published on the website of the public entity. Also, according to regulation 39 (1) *“a public entity must publish on its website and on any other print media widely circulated in Namibia a notice of every procurement together with the executive summary of the bid evaluation report within seven days of the procurement award”*. However, both at central government¹² and lower levels of government¹³ non-compliance with these transparency enabling sections of the law and regulations remains widespread. This poor or lack of compliance has been noted in reports of the PPU, which has conducted compliance audits of the public procurement system over recent years. In this regard, the major challenges within the system have been noted by the PPU as follows: *“Continued use of non-competitive methods by public entities without justification; Lack of an integrated public procurement system to provide data; Limited compliance on production and publishing of Annual Procurement Plans and procurement implementation reports; Delays in crafting and implementing requisite regulations; Absence of a public procurement performance assessment mechanism; Slow uptake and compliance with ministerial directives and requests; Lack of instrument for assessing impact of the procurement system on the socio-economic policy objectives of the Government; Absence of key bidding documents and standard contracts.”*¹⁴
5. In terms of non-compliance in the state sector with other anti-corruption related frameworks or measures, non-compliance or poor compliance have also become characteristic with regard to political parties adhering to political finance provisions in the Electoral Act 5 of 2014¹⁵, while Members of Parliament are also poorly complying with the rules of parliament concerning assets, interests and liabilities declarations¹⁶. With regard to political finance, the sections of the law that speak to political party finance transparency are articles 139, 140, 141 and 158. Notably, Article 139 of the Electoral Act (No. 5 of 2014) obliges all registered political parties to submit a declaration of assets and liabilities to the Electoral Commission of Namibia (ECN) within 21 days from the opening of parliament every year, while Article 140 requires all registered political parties submit audited financial statements to the ECN, as

¹¹ <https://www.lac.org.na/laws/annoSTAT/Public%20Procurement%20Act%2015%20of%202015.pdf>

¹² <https://ippr.org.na/wp-content/uploads/2022/11/PTN18-web-3.pdf>

¹³ <https://ippr.org.na/wp-content/uploads/2022/11/PTN19-web.pdf>

¹⁴ <https://www.lac.org.na/laws/2017/6255.pdf>

¹⁵ <https://ippr.org.na/wp-content/uploads/2023/02/PoP-19-web.pdf>

¹⁶ <https://ippr.org.na/wp-content/uploads/2023/02/PoP-18-web.pdf>

well as having such statements published in at least two (2) newspapers with nationwide circulation. Investigations over the years have shown that there has generally been low compliance with these rules by Namibian political parties, enabled by regulatory inertia or non-enforcement by the ECN. With regard to Members of Parliament adhering to parliamentary rules around assets and interests declarations, according to the 'Code of Conduct and Disclosure of Interests for Members of the National Assembly' all MPs have to declare their assets and interests by 30 April every year. However, as with political party finance, low compliance and weak enforcement marks this system¹⁷.

6. Both the Whistleblower Protection Act (No. 10 of 2017) and the Witness Protection Act (No. 11 of 2017) are only partially implemented as of December 2023. The Access to Information Act (No. 8 of 2022) has not yet been operationalised, as of December 2023. In the same vein, Namibia lacks a comprehensive declaration of assets and conflict of interest framework, as encouraged under Article 7 of the United Nations Convention Against Corruption (UNCAC). Namibia already has relatively good anti-corruption measures on the statute books, compliance with and enforcement of these measures continues to undermine and cast suspicion on state-led efforts to curb corruption.

Recommendations

The State should:

- **Legal measures:** Ensure that existing anti-corruption measures are appropriately implemented and optimally enforced;
- Fully operationalise and implement the Whistleblower Protection Act (No. 10 of 2017), the Witness Protection Act (No. 11 of 2017) and the Access to Information Act (No. 8 of 2022) as a matter of priority, as from the 2024/25 financial year;
- Initiate consultation processes that would culminate with the implementation of a comprehensive declaration of assets and conflict of interest framework, as encouraged under Article 7 of the United Nations Convention Against Corruption (UNCAC).
- **Transparency and accountability infrastructures:** Enhance transparency and accountability and establish the necessary infrastructure and mechanisms to facilitate public access to information, fostering a culture of openness and reducing opportunities for corruption.
- **Improve compliance** with political finance provisions outlined in the Electoral Act of 2014. The Electoral Commission of Namibia (ECN) should rigorously enforce the submission of asset and liability declarations by political parties within the stipulated timeframe.
- **Increased efforts** to ensure audited financial statements are submitted and published as required by law. Regulatory inertia should be addressed to enhance transparency in political party financing.

¹⁷ <https://ippr.org.na/wp-content/uploads/2022/04/PoP15-asset-declaration-web.pdf>

- **Strengthen institutions** such as the Anti-Corruption Commission (ACC) and the Prosecutor General's office to ensure swift and impartial investigations into corruption allegations.
- **Take concrete actions** to address the culture of unaccountability, and clear indications of additional arrests and indictments, particularly for senior officials implicated in corruption cases.
- **Take immediate steps** to address the culture of non-compliance within the public procurement system. This includes ensuring that public entities adhere to the transparency provisions outlined in the Public Procurement Act of 2015, such as publishing annual procurement plans and bid evaluation reports on their websites.

Fight against impunity and past human rights violations (arts. 2, 6, 7 and 14)

7. The Breakin the Wall of Silence (BWS) movement continues to engage treaty bodies about unresolved atrocities, such as enforced disappearances and human rights violations, committed by the ruling SWAPO Party during the liberation struggle era¹⁸. The survivors of the atrocities and violations committed by SWAPO during Namibia's liberation struggle have the right to know why they were exposed to torture, cruel, inhuman and degrading treatment. The decades of 'silence' from the ruling SWAPO Party regarding these atrocities and violations continues as a form torture for all those who were directly and indirectly affected by the enforced disappearances and torture committed by SWAPO in the Lubango dungeons. The official position of the Swapo Party, as voiced by senior party official and Cabinet minister Frans Kapofi in an interview in September 2022, is that the ruling party has nothing to apologise or account for during the liberation struggle era¹⁹. This position, which appears also to be the official Namibian Government position, is tantamount to not only denying the families/relatives of the missing persons and the survivors the justice they crave and deserve, but is also continuing to deprive them of dignity. BWS continues to cast a spotlight on the fact that the Namibian Government is in violation of its international obligations for failing to investigate and ensure effective remedies for the torture and disappearances committed by the SWAPO Party during the liberation struggle against Namibian citizens. In this regard, it should once again be noted that Article 10(1) of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts unequivocally provide that: "The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law." Illuminating in this context is the fact that the Namibian state is not a party to the International Convention for the Protection of all Persons from Enforced Disappearance.

¹⁸ <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8678&file=EnglishTranslation>

¹⁹ <https://neweralive.na/posts/kapofi-digs-into-genocide-dungeons>

Recommendations

The State should:

- At the very least, initiate an official independent inquiry, whether in the form of a presidential commission or similar type of platform, to establish the facts and to officially acknowledge, recognise and record that enforced disappearances and human rights violations occurred at the hands of the liberation movement during the struggle for independence.
- **Acknowledgment and Apology:** Publicly acknowledge and apologize for the atrocities and human rights violations committed by SWAPO during Namibia's liberation struggle. A genuine acknowledgment and apology are crucial for the survivors and families of the victims to find closure and begin the process of healing.
- **Initiate an independent and thorough investigation** into the enforced disappearances, torture, and other human rights violations committed by SWAPO during the liberation struggle. This investigation should be transparent, impartial, and comply with international standards. The findings should be made public, and those responsible for the crimes should be held accountable.
- **Compliance with international obligations:** Demonstrate its commitment to international human rights standards by acceding to the International Convention for the Protection of all Persons from Enforced Disappearance. Becoming a party to this convention will signify Namibia's dedication to preventing and addressing enforced disappearances, in line with its international obligations.
- **Victims support mechanisms:** Establish comprehensive victim support mechanisms. These mechanisms should provide psychosocial support, medical assistance, and legal aid to the survivors and families affected by the atrocities committed during the liberation struggle. Ensuring the well-being of victims is essential for their rehabilitation and reintegration into society.

Non-discrimination (arts. 2, 3 and 26)

8. The draft Prohibition of Unfair Discrimination, Harassment and Hate Speech Bill has not been finalised and tabled in the Namibian Parliament as of December 2023. Chapter 2 of the draft Bill prohibits unfair discrimination on the grounds of race, sex or gender, and disability, as well as prohibiting hate speech. The draft Bill does not expressly refer to prohibiting unfair discrimination on the basis of sexual orientation, and neither does it prohibit discrimination on the basis of age.
9. Marginalisation of and discrimination against the San, and other groups, remains a stain on Namibian society. In this regard, it is disheartening that the status of the White Paper on Indigenous Peoples continues to be unresolved. As of December 2023, indigenous groups such as the San remain

underserved when it comes to healthcare and education, and continue to be largely excluded in terms of employment and opportunities in the mainstream economy. With regard to healthcare, the 2022 Guide to Indigenous Peoples' Rights in Namibia²⁰, of the Office of the Ombudsman, states: *“As far as health is concerned, there is a serious lack of health care facilities close to the regions where indigenous peoples live. There is also a lack of medical practitioners who can speak indigenous languages which makes access and communication more difficult. The cost of medical treatments and services is also an issue.”* Concerning education, the Guide states: *“An effort has been made to preserve the culture and language of indigenous peoples. Policies have been adopted for instruction given to indigenous children in their native language. However, a problem of lack of personnel who can speak indigenous languages remains a significant challenge.”* Regarding employment and economic opportunity, the Guide notes: *“Due to their low literacy level, indigenous peoples are finding it difficult to enter the mainstream work force of Namibia.”* The persistence of these issues continues to have a marginalising effect on indigenous groups, such as the San. It is, however, heartening that the Ombudsman has a particular interest in the rights of indigenous peoples.

10. Marginalisation, discrimination, harassment and violence against lesbian, gay, bisexual, transgender and intersex persons remain serious concerns in Namibia, with the Namibian state contributing to and stoking this climate of hate.
11. According to LGBTQI+ activists, attacks and incidents of harassment have escalated in the aftermath of the Namibian Supreme Court's ruling on 16 May 2023 that same-sex marriages concluded lawfully outside the country have to be recognised by Namibian authorities, after the Ministry of Home Affairs had refused to recognise two same-sex unions²¹ entered into in other countries where same-sex marriages are legal. In its arguments before both the High Court and the Supreme Court, the Namibian Government, represented by the Office of the Attorney-General, argued that its “opposition to the above application and appeals was based on its legal position that the recognition of a spouse to same-sex marriages is incompatible with the values, aspirations and provisions of the Namibian Constitution especially Article 14 (that deals with the concept of the institution of Family) and other relevant statutes/laws of Namibia and thus unlawful”²². In the wake of the ruling, the ruling Swapo Party announced that it was against same-sex marriage²³, and that it would seek to amend the apartheid-era Marriage Act (No. 25 of 1961)²⁴.
12. In early July 2023, Swapo Party MP Jerry Ekandjo introduced amendments to the Marriage Act through a Private Members' Bill in the National Assembly²⁵. The Bill expressly sought to “prohibit same-sex marriage, solemnisation of

²⁰ <https://ombudsman.org.na/wp-content/uploads/2022/12/INDIGINEOUS-PEOPLES-RIGHTS.pdf>

²¹ <https://namiblii.org/akn/na/judgment/nasc/2023/14/eng@2023-05-16>

²² https://drive.google.com/file/d/1h113dU5vg-IPZOXIOOXTD6iv9rBwOKM2/view?usp=drive_link

²³ <https://www.namibian.com.na/swapo-politburo-rejects-same-sex-marriage/>

²⁴ <https://media.namiblii.org/files/legislation/akn-na-act-1961-25-eng-2019-01-30.pdf>

²⁵ https://drive.google.com/file/d/1Mf8hvcCUrwHgX6DYDd_BjFRUERkWIUXR/view?usp=drive_link

same-sex marriage and the recognition of same-sex marriage in Namibia”²⁶. At the same occasion as the introduction of amendments to the Marriage Act, Ekandjo also introduced another Private Members’ Bill, titled the Definition of Spouse Bill, which explicitly sought to contradict the Supreme Court ruling of May 2023²⁷. Both Bills were passed by the National Assembly a mere week later, on 11 July 2023, with support from the political opposition²⁸, making it clear that while political parties differ immensely on major policy and legislative matters, there appeared to be strong and near unanimous opposition across the political spectrum to recognising same-sex marriages in Namibia. On the same day that the Bills were passed in July 2023, Attorney-General Festus Mbandeka wrote to Minister of Home Affairs, Immigration, Safety and Security, Albert Kawana, informing him that amendments to the Civil Registration and Identification Bill (CRIB) were “in compliance with the law and the Constitution”²⁹. Among other amendments to an earlier version of the Bill, the draft Bill in question defined marriage as a union solely between a man and a woman, thus explicitly excluding same-sex marriages. As of December 2023 the Ekandjo Bills seeking to prohibit same-sex marriage have not been signed into law by Namibian President Hage Geingob.

13. The Supreme Court ruling of May 2023 has unleashed attacks on the judiciary – from politicians, church leaders and civilians – of a scale arguably never witnessed before in Namibia. According to the Society of Advocates of Namibia, the attacks on the Supreme Court, and by extension the entire judiciary, amounted to “an impermissible and unjustifiable attack on the independence of the Judiciary and to an attempt to intimidate the Judiciary and undermine its integrity”³⁰.
14. Another marker of the Namibian state’s often tone-setting opposition to the legal normalisation of same-sex relations are its responding arguments in the constitutional challenge, brought by gay rights activist Friedel Dausab, of the common law crimes of sodomy and unnatural sexual offences in the High Court of Namibia. In opposing the repealing of the common law crimes of sodomy and unnatural sexual offences Attorney-General Festus Mbandeka has argued that “one of the purposes of the ban on homosexual sodomy is the moral views of Namibians that certain forms of sexual behaviour are immoral and unacceptable”³¹. The government’s stance is in conflict with a 2020 assessment by the Law Reform and Development Commission (LRDC), in the Ministry of Justice, that the common law crime of sodomy is “almost certainly unconstitutional”³². The ruling in this case will be delivered in May 2024. Another example of the state’s position on same-sex relations or marriage is

²⁶ https://drive.google.com/file/d/12bv2_0vvoPsnhBPgFfGa7O0mAd865kcr/view?usp=drive_link

²⁷ https://drive.google.com/file/d/1IX2wZ0NfeGvVzaeA7EGSoDfHn3KTaZlp/view?usp=drive_link

²⁸ <https://ww2.namibian.com/na/ekandjos-anti-gay-marriage-bills-sail-through-national-assembly/>

²⁹ <https://drive.google.com/file/d/1nUrAy9gbyn0libZJLWo-TrWESS4R55a/view?usp=sharing>

³⁰ <https://drive.google.com/file/d/1CofE3mjnfYUIVc3BFFC0zURjUrB1pAsj/view?usp=sharing>

³¹ <https://ww2.namibian.com/na/judgement-on-sodomy-law-challenge-in-may/>

³²

<https://namibii.org/akn/na/doc/law-reform-report/2020-11-01/report-on-the-abolishment-of-the-common-law-offences-of-sodomy-and-unnatural-sexual-offences/eng@2020-11-01/source.pdf>

the fact that despite civil society advocacy and recommendations, protections against domestic violence under the Combating of Domestic Violence Amendment Act (No. 6 of 2022) are not provided or extended to individuals in same-sex relationships³³.

Recommendations

The State should:

- **Comprehensive Anti-Discrimination Legislation:** prioritize the finalization and enactment of the Prohibition of Unfair Discrimination, Harassment and Hate Speech Bill, ensuring that it explicitly prohibits discrimination based on sexual orientation and age..
- Finalise the White Paper on Indigenous Peoples as a matter of urgency;
- Repeal the common law crimes of sodomy (which applies only to anal intercourse between males) and unnatural sexual offences (which covers various sexual activities between men);
- Amend the Combating of Domestic Violence Amendment Act (No. 6 of 2022) to extend the law's protections to individuals in same-sex relationships.
- Engage in, and allocate adequate resources towards, sensitising the general Namibian public on LGBTQI+ rights within the Namibian constitutional framework in order to minimise victimisation, discrimination and stigmatisation.
- **Protection of Indigenous Peoples' Rights:** expedite the resolution of the status of the White Paper on Indigenous Peoples and take concrete steps to address the marginalisation and discrimination faced by indigenous groups, particularly the San. This includes improving access to healthcare, education, employment, and economic opportunities for indigenous communities.
- **Safeguarding LGBTQI+ Rights:** uphold the rights of LGBTQI+ individuals and combat discrimination, harassment, and violence against them. Refrain from introducing legislation that discriminates against same-sex marriages and work towards legal reforms that protect LGBTQI+ rights, including repealing laws criminalising consensual same-sex relationships.
- **Protection of Judicial Independence:** respect and uphold the independence of the judiciary, refraining from attacks and attempts to undermine its integrity. Politicians, church leaders, and civilians should refrain from making impermissible attacks on the judiciary and respect its role in upholding the rule of law and protecting human rights.
- **Repeal of Discriminatory Laws:** Namibia should prioritise the repeal of discriminatory laws, such as the common law crimes of sodomy and unnatural sexual offences, which perpetuate stigma and discrimination against LGBTQI+ individuals. The government should align its legal framework with international human rights standards.

³³ <https://namiblii.org/akn/na/act/2022/6/eng@2022-11-29>

Gender equality (arts. 3 and 26)

15. The Marriage Bill, Divorce Bill and the Uniform Matrimonial Property Bill (which will include the long overdue repeal of the Native Administration Proclamation 15 of 1928) have not been tabled in parliament as of December 2023. While Namibia fares relatively well in terms of frameworks that promote, enforce and monitor gender equality, the country still faces considerable challenges. In this regard, it needs pointing out that child marriage remains a problem, with roughly 7% of married young women (20 – 24 years) having been married before the age of 18 years. Namibia also has a high rate of gender-based violence, as 16% of girls and women “15-49 years reported that they had been subject to physical and/or sexual violence by a current or former intimate partner”³⁴.
16. At the same time, teen or adolescent pregnancy remains a pressing societal concern, with “63.9 per 1,000 women aged 15-19” having been pregnant. An investigation found that “from 2018 to 2021, teenage pregnancies stood at 56,300, while the number of Grade 12 pupils who qualified for university stood at 37,480”³⁵. It should be borne in mind that in 2017, the World Health Organisation (WHO) noted that “Namibia has one of the highest rates of teenage pregnancy at 19 percent”³⁶.

Recommendations

The State should:

- **Tabling of marriage, divorce, and uniform matrimonial property bills:** Finalise and bring to parliament the Marriage Bill, Divorce Bill and the Uniform Matrimonial Property Bill as a matter of urgency;
- Increase and enhance, through greater resource allocation, campaigns and programmes to curb and counter child marriage, gender-based violence and teenage / adolescent pregnancies.
- Address legal gaps and promote gender equality. These bills should include provisions to repeal outdated legislation such as the Native Administration Proclamation 15 of 1928.
- **Combat child marriage and gender-based violence:** Namibia needs to intensify efforts to combat child marriage and gender-based violence.

³⁴

<https://data.unwomen.org/country/namibia#:~:text=In%20Namibia%2C%2091.7%25%20of%20legal,parliament%20were%20held%20by%20women.>

³⁵ <https://investigations.namibian.com.na/160-800-teen-pregnancies-since-2010/>

³⁶

<https://www.afro.who.int/news/increased-access-quality-family-planning-services-key-health-adolescent-girls-and-young-women>

- **Address Teenage Pregnancy:** address the high rate of teenage pregnancy by implementing comprehensive sexual and reproductive health education programs in schools and communities.
- **Enhance Education Opportunities:** ensure that teenage pregnancy does not hinder educational opportunities for young women. Taken to support pregnant and parenting teenagers to continue their education, including access to flexible schooling options and support services.
- **Strengthen data collection and monitoring:** enhance data collection and monitoring mechanisms to track progress in addressing gender equality issues, including child marriage, gender-based violence, and teenage pregnancy.

Violence against women, and domestic violence (arts. 2, 3, 6, 7 and 26)

17. The tides of gender-based violence continue to sweep over Namibia without abating. According to Namibian Government and UN estimates about 30 cases of gender-based violence are reported every day, which would give an annual total of almost 11,000 reported cases. The real number of instances of such violence is probably much higher as most cases are estimated to remain unreported. In 2022 the Afrobarometer survey reported that a “majority of Namibians believe that violence against women and girls is common in their homes and communities”³⁷. To illustrate, in 2020 the Namibia Violence Against Children and Youth Survey found that about 40% of females and 45% of males, aged 18-24, had experienced physical, sexual or emotional violence in childhood and about 11% of girls are physically forced into their first sexual experience³⁸. In June 2022, the Ombetja Yehinga Organisation (OYO) noted that while “few data are currently available, the 2020 COVID-19 crisis, which resulted in lockdown and restrictions, led to cases of GBV going unreported and potentially increasing. The violent crimes committed against women and girls in Namibia pose a serious threat to the basic fabric of Namibian society. This violence is just the tip of the iceberg, and is a grim reflection of the country’s social health in terms of the cultural aspects of its patriarchal society and its violent colonial past”³⁹.
18. The state-run systems meant to assist victims and survivors of gender-based violence are broken – from the Ministry of Gender Equality, Poverty Eradication and Social Welfare (MGEPEWS) experiencing a critical shortage of social workers to the Namibian Police’s GBV Protection Units being dysfunctional. GBV Protection Units are operational in all 14 regions, but the range of issues besetting the GBV Protection Units system are severely

³⁷

<https://www.afrobarometer.org/articles/majority-of-namibians-say-gender-based-violence-is-common-should-be-treated-as-a-criminal-matter/>

³⁸ <https://www.togetherforgirls.org/en/resources/namibia-vacs-report-2021>

³⁹ <https://www.alignplatform.org/sites/default/files/2022-06/oyo-final.pdf>

hampering service delivery. According to an April 2023 field report, a UN Joint Field Visit found the following “issues/problems” affecting the operations of GBV Protection Units: “No database to capture GBV data in real-time; Lack of specialised training of service providers to deliver comprehensive and survivor centred services; No training for 4-5 years to new recruits on proper investigation of cases due to financial constraints; Limited accessibility to the GBV services (after working hours and during weekends); No dedicated budget for the GBV Protection Unit services”. To illustrate further, a site visit by the UN team to the Katutura GBV Protection Unit, in the Namibian capital city Windhoek, made the following observations about the unit: “Unit is closed after 17:00 hours and over the weekends, although staff are on standby for emergencies. No dedicated budget for the GBVPU. Insufficient human resources (doctors, police, social workers) with the need for ongoing capacity development. Limited availability of transport to execute duties in all constituencies. Limited operational space. Limited time dedicated to prevention interventions. No internet connectivity and non-functional phone lines. Required technical support to operationalize the database. Have limited places of safety.”⁴⁰ With regard to the issue of places of safety, Namibian Government operated safety homes / shelters for victims of GBV are no longer operational.

19. With regard to the effectiveness of programmes and campaigns to address gender-based violence, both by the state and civil society, in 2022 the Ombetja Yehinga Organisation (OYO) noted: “Current campaigns to tackle gender-based violence (GBV) in Namibia stereotype the woman as the victim and the man as the aggressor. The country needs to rethink GBV campaigns, de-normalise this trend and give room to other narratives. Campaigns are slow to adapt to change. In particular, there is not enough recognition of emerging dominant forms of GBV, such as emotional violence and online violence.”
20. Additionally, as already mentioned earlier, the Combating of Domestic Violence Amendment Act (No. 6 of 2022) does not extend the law’s protections to individuals in same-sex relationships.

Recommendations

The State should:

- **Legal provision:** Take measures to adequately resource and capacitate the Namibian Police’s GBV Protection Units;
- Amend the Combating of Domestic Violence Amendment Act (No. 6 of 2022) again to extend the law’s protections to individuals in same-sex relationships.
- **Budget allocation:** Introduce budgetary and resource allocation steps to fully operationalise the network of state-run safety homes / shelters for victims of GBV;
- Ensure that with regard to cultural factors that contribute to the high rates of gender-based violence across communities, the Ombetja Yehinga

Organisation (OYO) “campaigns, training and workshops should look beyond urban areas, where it is easier to reach targets, and prioritise rural communities that are more likely to hold traditional views and, therefore, more likely to see some forms of violence as acceptable.

Voluntary termination of pregnancy and access to sexual and reproductive rights (arts. 6, 7 and 8)

20. Namibia has a young population, with two-thirds of citizens under the age of 35. According to a June 2023 statement by the UN Population Fund (UNFPA) in Namibia, the sexual and reproductive rights landscape of the country “is characterised by high rates of adolescent pregnancies and a high proportion of unmet need for family planning. The national teenage pregnancy rate stands at 19%, which means that about every fifth woman aged 15 to 19 has begun childbearing”⁴¹. In early 2023 the National Assembly’s Standing Committee on Gender Equality, Social Development and Family Affairs held country-wide consultations on public views about abortion and repealing the Abortion and Sterilisation Act (No. 2 of 1975)⁴². As of December 2023, it remains unclear what the outcome of these country-wide consultations were as the committee report of this exercise was not publicly available as of December 2023⁴³. There has been no reform of the Abortion and Sterilization Act (No. 2 of 1975), as amended through Act No. 48 of 1982, such as removing unwarranted administrative requirements. Anecdotally, LGBTQI+ communities are still not assisted with the necessary care and dignity by health services, while language barriers are still rife when marginalised groups (i.e. San) approach health services. For instance, with regard to access to healthcare by the San, in 2021, Amnesty International found: “Rampant discrimination against the Indigenous San people in Namibia is denying them access to healthcare and leaving them vulnerable to deadly diseases such as tuberculosis (TB) and its multi-drug resistant strain, which is ravaging their communities in the Omaheke and Otjozondjupa regions.”⁴⁴

Recommendations

The State should:

- **Urgently reform:** reform the Abortion and Sterilisation Act (No. 2 of 1975) to address the high rate of adolescent pregnancies and unmet family planning

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<https://namibia.unfpa.org/en/news/increasing-access-sexual-and-reproductive-health-services-adolescents-and-youth-through-mobile>

⁴² <https://www.namibian.com.na/abortion-debate-persists/>

⁴³ <https://namibian.com.na/namibians-split-over-abortion-ban-reform/>

⁴⁴

<https://www.amnesty.org/en/latest/news/2021/10/namibia-discrimination-deprives-indigenous-san-people-of-the-right-to-health-as-tb-poses-serious-risk-to-their-lives/>

needs. This includes repealing unwarranted administrative requirements and ensuring access to safe and legal abortion services.

- Effective family planning awareness-raising and service provision need to be made available to communities across the country through state-run healthcare and educational facilities;
- **Finalise and release publically** as a matter of urgency the report on the country-wide consultations by the National Assembly's Standing Committee on Gender Equality, Social Development and Family Affairs on abortion and repealing the Abortion and Sterilisation Act (No. 2 of 1975);
- **Strengthen healthcare access for marginalised groups:** More needs to be done to provide health services to marginalised and far-flung groups in languages they understand for optimal effectiveness of healthcare service provision to all Namibians.
- **Enhance sexual and reproductive health services:** improve access to sexual and reproductive health services, particularly for adolescents and marginalised groups. Health services should be LGBTQI+ inclusive and address language barriers faced by marginalised communities like the San.
- **Promote comprehensive sexuality education:** implement comprehensive sexuality education programs in schools and communities to empower young people with the knowledge and skills to make informed decisions about their sexual and reproductive health.

Issue 9. Right to life and excessive use of force (art. 6)

21. Excessive or deadly use of force and police brutality continue to be of serious concern across Namibian society. The list of high profile incidents continues to grow and underscore the persisting problem of police violence. The Police Act (No. 19 of 1990) states that members of the police may only use reasonable force in exercising their duties (section 13 (10)). The media reported in February 2023 that the Office of the Ombudsman had received 579 complaints of alleged police brutality during the 2021/22 financial year, and 598 complaints for 2020/21, "*making the Namibian Police the institution most complained about in the country*"⁴⁵. Just a month earlier, in January 2023, a resident of Keetmanshoop, in the southern //Kharas Region, was beaten to death by two police officers. The two police officers implicated in the death of the Keetmanshoop resident, Elleste Plaatjies, were arrested and charged with murder⁴⁶. Despite this, the incident caused community demonstrations against police brutality and calling for accountability⁴⁷, and the Namibian Police Inspector-General, Joseph Shikongo, had to meet the community himself to quell the situation⁴⁸.

⁴⁵ <https://ww2.namibian.com.na/ombudsman-records-579-cases-against-police/>

⁴⁶ <https://allafrica.com/stories/202301230398.html>

⁴⁷ <https://neweralive.na/posts/keetmans-community-denounces-police-brutality>

⁴⁸ <https://nbcnews.na/index.php/node/98190>

22. A notable incident in recent years of excessive use of force happened in May 2023, when the Namibian Police fired teargas and rubber bullets at peaceful demonstrators outside China Town in the Namibian capital Windhoek⁴⁹. Some of the demonstrators were also arrested and one journalist was seriously injured in the melee⁵⁰. The incident led to condemnation of police actions from civil society⁵¹ and media organisations⁵². In their statement in the wake of the incident, the ACTION Namibia Coalition, an alliance of media and civil society groups advocating for enhanced freedom of expression and access to information, expressed “its concern about the use of excessive force by the Police in response to the public protest near China Town in Windhoek on Friday May 13”. The statement noted that group “condemned the Police’s disproportionate use of force against #ShutItAllDown protesters and journalists on 10 October 2020. We repeat the call we made then for the Police to respect human rights and for the Force to improve its crowd control tactics. Sensible and proportionate Police responses are crucial if the scenes that took place on Friday and in October 2020 are to be avoided. Irresponsible reactions can lead to further conflagrations and have tragic consequences.” Going back further, it was reported that on 3 March 2020, Oshikango, in the Ohangwena Region, resident David Tuhafeni died after allegedly being assaulted by two police officers at the northern town⁵³. The family of Tuhafeni lodged a claim against the Namibian Police over his death and the two police officers had been arrested, appeared in court and had been granted bail, but apparently remained on duty⁵⁴. It is unclear whether this case has actually been resolved, three years later. These are just some of the incidents of excessive use of force or police brutality from recent years, and in April 2023 it was reported by Afrobarometer that “Namibians see police falling short of professional conduct and respect for citizens’ rights”⁵⁵. It should be noted as well that members of the Namibian judiciary have also condemned police action over the years. For instance, in a 2022 judgement in a police brutality case, it was reported that a judge of the High Court stated in his ruling “that assaults by the police and defence force on members of the public in Namibia were ‘prevalent’ and that this was ‘intolerable’. Damages in such cases were paid from taxpayers’ money, and he questioned why the individual perpetrators were allowed to ‘disappear into the undergrowth’ instead of being held accountable”⁵⁶.

⁴⁹ <https://informante.web.na/?p=319515>

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<https://www.ifj.org/media-centre/news/detail/category/africa/article/namibia-journalist-shot-by-police-during-protest>

⁵¹ <https://action-namibia.org/action-statement-namibian-police-should-respect-human-rights/>

⁵² <https://www.namibianewsdigest.com/efn-condemns-police-response-during-chinatown-riot/>

⁵³ <https://namibian.com.na/family-to-sue-govt-for-mans-death/>

⁵⁴ <https://namibiafactcheck.org.na/news-item/spotlight-police-brutality-in-namibia/>

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[https://www.afrobarometer.org/publication/ad635-namibians-see-police-falling-short-of-professional-conduct-and-respect-for-citizens-rights/#:~:text=Most%20recently%20the%20Office%20of,country%20\(Karuuombe%2C%202023\).](https://www.afrobarometer.org/publication/ad635-namibians-see-police-falling-short-of-professional-conduct-and-respect-for-citizens-rights/#:~:text=Most%20recently%20the%20Office%20of,country%20(Karuuombe%2C%202023).)

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<https://africanlii.org/articles/2022-10-07/carmel-rickard/namibian-judge-calls-out-police-army-impunity-for-assaults-on-the-public>

Recommendations

The State should:

- **Strengthen police oversight mechanisms:** enhance oversight mechanisms to hold law enforcement accountable for excessive use of force and police brutality.
- **Implement comprehensive police reform:** undertake comprehensive police reform to address systemic issues contributing to excessive use of force. This includes reviewing and updating laws such as the Police Act (No. 19 of 1990) to ensure that they align with international human rights standards and promote professional conduct among law enforcement officers.
- **Enhance training and accountability:** Provide regular training to police officers on the appropriate use of force and respect for human rights. Additionally, establish clear mechanisms in place to hold officers accountable for misconduct, including swift disciplinary action and prosecution when warranted.
- **Conduct timely and thorough investigations,** through an independent oversight mechanism, into complaints and cases of alleged police brutality / violence and make the results public upon completion of such investigations.
- **Uphold judicial independence:** uphold the independence of the judiciary to ensure that cases of police brutality are adjudicated impartially and perpetrators are held accountable. Judges and magistrates should continue to condemn police actions inconsistent with human rights principles and ensure justice for victims.

Right to life, environmental degradation and climate change (art. 6)

23. In October 2020, Namibian think-tank the Institute for Public Policy Research (IPPR) observed in a briefing paper: “Poaching, illegal logging and forest harvesting, and illegal sand-mining have come to characterise Namibia’s struggles to maintain its natural assets in the face of climate change gaining increasing prominence as a threat to the sustainability of the drought-prone southern African country that is hemmed in by growing deserts. Much of the damage to Namibia’s natural capital that has escalated since around 2015 can be attributed to a failure of governance – government departments and entities that have struggled, underperformed or failed in their custodial or regulatory mandates or functions concerning safeguarding some of Namibia’s most prized natural assets.”⁵⁷ In a similar vein, in a 2022 report on the impact of extractive industries on communities, the Legal Assistance Centre (LAC) noted: “Although Government has committed to protecting the environment

⁵⁷ <https://ippr.org.na/wp-content/uploads/2020/10/Depleting-natural-capital-web.pdf>

and welfare of its people as well as the maintenance of the ecosystem through its legislative and regulatory frameworks – these frameworks, some dating back to pre-independence and drafted by people with no understanding of the dry/semi-arid environment of the Southern African part of Africa, are not effectively implemented. Additionally, there seems to be very little political will to act beyond the scope of these laws to protect the environment and the people, animals and fauna directly dependent on it”⁵⁸.

24. The Wildlife and Protected Areas Management Bill has been in the pipeline for over 20 years with still no clear indication of when it will be finalised and tabled in the Namibian parliament. According to a Legal Assistance Centre (LAC) explainer of what the Bill entails, the following: “This proposed new law would introduce new approaches to nature conservation based around eight key principles: (1) maintaining and restoring biological diversity; (2) maintaining and restoring essential ecological processes; (3) promoting the sustainable use of wildlife; (4) providing State incentives for land rights holders to promote conservation and to maintain or rehabilitate ecosystems; (5) providing equitable access to the benefits of wildlife and other indigenous biological resources; (6) vesting ownership of wildlife in the State, unless otherwise provided in the law; (7) giving authority over the use of wildlife to the appropriate levels of society to ensure sustainable use and effective conservation of biodiversity and ecosystems; and (8) sharing responsibilities for managing shared resources. These principles are consistent with Article 95(l) of the Namibian Constitution, which promotes the maintenance of ecosystems, essential ecological processes and biological diversity and the utilisation of living natural resources on a sustainable basis for the benefit of all Namibians.”⁵⁹ According to another LAC brief, the Protected Areas and Wildlife Management Bill will replace the Nature Conservation Ordinance 4 of 1975 (as amended), by consolidating the 1975 Ordinance and all its amendments. The LAC observes that “it would also replace the Controlled Wildlife Products and Trade Act 9 of 2008 (as amended in 2017 and 2020), meaning that Namibia will continue to comply with the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)”⁶⁰.
25. Over recent years lithium exploration and mining by a Chinese-owned company, Xinfeng, in northwestern Namibia, oil and gas exploration by Canadian company ReconAfrica in northeastern Namibia and uranium exploration by a Russian state-owned entity, Uranium One, in eastern Namibia have all raised suspicions and allegations about the flouting of environmental rules and regulations by Namibian Government departments mandated to protect environmental and other resources, as well as collusion and corruption. In the case of Xinfeng, in a parliamentary statement on illegal

⁵⁸ https://www.lac.org.na/projects/lead/Pdf/Extractive_Industry.pdf

⁵⁹ https://www.lac.org.na/news/probono/ProBono_48-WILDLIFE&PROTECTED_AREAS_MANAGEMENT_BILL.pdf

⁶⁰ https://www.lac.org.na/news/probono/ProBono_42-ENVIRONMENTAL_LAWS.pdf

lithium mining in the Uis and Omatjete areas of northwestern Namibia, Landless People's Movement (LPM) MP Henny Seibeb noted: "Poor and marginalised communities in Namibia's Uis and Omatjete areas are voicing serious concerns about illegal lithium mining. They allege that corrupt government officials from the Ministries of Mines and Energy, Environment, Forestry and Tourism, as well as certain Traditional Authorities, have given their blessing for the mining operation in exchange for bribes. These concerns were raised by concerned groups in the Uis community during a meeting on March 13, 2023."⁶¹ With regard to the long-running controversy around ReconAfrica's search for oil and gas in northeastern Namibia, in September 2023, a parliamentary committee investigation "found ReconAfrica did not secure the proper permits before it began its oil exploration activities"⁶². In eastern Namibia, the exploration activities of Uranium One have been on hold since December 2022 because of the withdrawal of a permit by the Ministry of Agriculture, water and Land Reform over "concerns about potential contamination of underground water"⁶³. The case of ReconAfrica has become illuminating in how the Namibian Government is enabling the undermining of environmental protections by allowing the continued prospecting for oil and gas in or near environmentally sensitive or protected areas. In July 2023 it was announced by Namibia's environmental commissioner, in the Ministry of Environment, Forestry and Tourism, that ReconAfrica had been granted environmental clearance again to continue its prospecting activities despite evidence that it had previously flouted the rules.

26. With regard to ongoing offshore oil and gas exploration and green hydrogen production related activities onshore and offshore along the southern Namibian coastline, there appears to be a willingness by the Namibian Government to relax environmental standards. In an October 2023 report, specifically addressing concerns around offshore oil and gas drilling, the Legal Assistance Centre (LAC) found that "there is a lack of political will to ensure that the legal framework protects not only the country's revenue but also its people and environment"⁶⁴.

Recommendations

The State should:

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https://www.parliament.na/wp-content/uploads/2023/04/Motion_on_the_illegal_lithium_mining_in_Uis_District_by_Hon_Seibeb.pdf

⁶² <https://www.voanews.com/a/canada-s-reconafrika-violated-namibia-s-laws/7291482.html>

⁶³

<https://www.voanews.com/a/namibia-halts-russian-uranium-exploration-over-environmental-concerns/6896663.html>

⁶⁴ https://www.lac.org.na/projects/lead/Pdf/Offshore_Oil_Drilling_Namibia_Legal_Provisions_2023.pdf

- Finalise the Protected Areas and Wildlife Management Bill and enact without further delay;
- Uphold the law and enforce environmental standards and rules, as well as strengthen legal frameworks where they are proving to be ineffective;
- Consider the establishment of an environmental court as a way to deal speedily and effectively with environmental-impact issues.
- **Compliance in extractive industries:** ensure that companies involved in extractive industries, such as lithium, oil, gas, and uranium exploration adhere strictly to environmental rules and regulations.
- Ensure that proper permits are obtained before commencing exploration activities and take swift action against any violations.
- **Uphold environmental standards in offshore activities:** ensure that environmental standards are maintained to safeguard both the country's revenue and its people and environment.
- **Foster transparency and accountability:** enable public oversight of environmental management and natural resource exploitation, this includes ensuring public access to information, robust monitoring systems, and meaningful stakeholder engagement in decision-making processes related to environmental conservation and resource management.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (art. 7)

27. The Prevention and Combating of Torture Bill, despite having been in the development pipeline for years, still has not been finalised and enacted into law as of December 2023.

Recommendation: **The State should** finalise the drafting of the Prevention and Combating of Torture Bill and pass it into law as a matter of priority.

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8 and 26)

28. Child labour is not being addressed with the necessary urgency and importance required even though indications are that it is a growing societal problem and concern. Child labour is especially a common and acceptable daily occurrence in rural and remote areas. A 2022 report of the US Labor Department stated of the situation in Namibia: "An extended drought and economic downturn in northern Namibia and southern Angola have likely affected children's vulnerability to child labor, including its worst forms. Children from rural areas move to urban centres, such as Windhoek, in pursuit of supplemental income for their families, and some of these children engage

in selling drugs, organised begging, and commercial sexual exploitation.”⁶⁵ In October 2023 it was reported that “Windhoek and Walvis Bay have been labelled as hotspots for child labour and sexual exploitation”⁶⁶. The article states that the charcoal industry in Namibia has become “particularly susceptible to human trafficking, as locals hire Angolans without papers and subject them to forced labour”, many of them children. While by accounts child labour appears to be on the increase, especially through the trafficking of children from neighbouring countries and even further afield on the continent, the perception is that Namibian Government interventions are inadequate and ineffectual. The Legal Assistance Centre (LAC) noted for this report that there were “limited or inadequate reporting systems or services on the Namibian Government level”, and that, for instance, “labour inspectors are not visible enough in the remote areas”. In this regard, the Children’s Advocate in the Office of the Ombudsman, Heather Harker, was quoted saying in October 2023: “The government and businesses need to implement laws and policies requiring businesses to ensure the protection of human rights – particularly children’s rights – and create accessible remedies for the victims of such violations.” Civil society actors in Namibia have pointed to the Ministry of Gender Equality, Poverty Eradication and Social Welfare not being equipped or capacitated to deal with the growing incidence of child labour and sexual exploitation, and that there is a lack of coordination among various Namibian Government entities, including law enforcement, when it comes to confronting child labour and sexual exploitation, as well as human trafficking.

Recommendations

The State should:

- Properly implement and enforce laws, policies and measures relevant to effectively detecting and preventing child labour and sexual exploitation;
- Do more awareness-raising and outreach work in and around vulnerable groups and communities;
- Ensure more visible in rural and remote areas of the country to Namibian Government labour inspectors;
- Allocate more resource and capacitate relevant departments and agencies, such as law enforcement, to effectively engage with and countering the growing scourge of child labour and sexual exploitation.

Liberty and security of the person (art. 9)

29. Excessively long pre-trial detention remains a massive problem in the Namibian criminal justice system, and according to researchers the situation is going from bad to worse⁶⁷. Scholar Stefan Schultz noted in November 2023 that the “challenges of Namibia’s pre-trial detention system are manifold, and

⁶⁵ <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/namibia>

⁶⁶ <https://namibian.com.na/namibian-children-face-labour-sexual-exploitation/>

⁶⁷ <https://ww2.namibian.com.na/we-need-a-reset-pre-trial-detention-is-going-from-bad-to-worse/>

mostly rooted in a lack of resources”. One of the consequences of a lack of resources is understaffing in the criminal justice system, particularly in the courts system. In a 2018 report on bottlenecks and backlogs in the criminal justice system, the Institute for Public Policy Research (IPPR) noted that “in especially the courts system, bottlenecks, backlogs and undue delays are or have been significant longstanding frustrations, specifically in: a) how long it takes to bring cases to trial and how long trials take to finalise; b) how long it takes magistrates and judges to deliver their judgements; and, c) how long it takes appeals to be set-down and heard”⁶⁸. This situation still largely prevails, in that the courts system remains overburdened, under-resourced and understaffed. Contributing to and exacerbating this situation is a shortage of prosecutors, with a 2023 report noting: “The shortage of public prosecutors and research assistants hampers the operations of the Prosecutor General's office” leading to “an outcry over the lack of progress in finalising cases”⁶⁹. Also a factor in lengthy pretrial detentions is the fact that many accused persons are not able to afford police bail or an application for bail. Lengthy pretrial detentions are contributing to the overcrowding and unhygienic conditions observed at Namibian Police holding cells and Namibia Correctional Services prisons across the country, as noted by the Office of the Ombudsman⁷⁰.

Recommendation:

The State should:

- **Allocate sufficient resources:** adequately resource the criminal courts system, as well as the Office of the Prosecutor General, and contribute to lessening inordinately lengthy pretrial detentions which have become a human rights related concern attaching to the entire justice system.
- **Expedite case processing:** streamline the legal process and reduce delays in bringing cases to trial. This can be achieved through better case management practices, including setting realistic timelines for trials and judgements, and ensuring timely scheduling of appeals.
- **Enhance access to legal representation:** ensure that accused persons have access to legal representation, regardless of their financial means and expand legal aid to ensure that individuals can effectively navigate the legal system.
- **Implement bail reform:** take measures to address the issue of accused persons unable to afford bail. This may involve reviewing bail conditions and exploring alternatives to pre-trial detention, such as supervised release or electronic monitoring.

⁶⁸ https://ippr.org.na/wp-content/uploads/2018/12/IPPR_JUSTICE_web_new.pdf

⁶⁹

<https://nbcnews.na/node/101066#:~:text=The%20shortage%20of%20public%20prosecutors,of%20money%20aundersing%20and%20terrorism.>

⁷⁰ <https://ombudsman.org.na/wp-content/uploads/2023/08/2022-ANNUAL-REPORT.pdf>

- **Improve conditions of detention:** mitigate the negative impact of pre-trial detention on accused persons and efforts to improve conditions in police holding cells and correctional facilities.

Treatment of persons deprived of their liberty (art. 10)

30. The treatment of persons deprived of their liberty continues to be an area where the Namibian Government needs to make considerable improvement. The latest annual report of the Office of the Ombudsman makes it clear that conditions in Namibian Police holding cells and Namibia Correctional Services facilities remain concerning⁷¹. The 2022 report, aside from revealing that most complaints received concerned treatment by the Namibian Police (574 complaints) and the Namibia Correctional Services (253 complaints), lists a range of shortcomings recorded at police holding cells and prison facilities across the country. According to the Ombudsman, overcrowding, poor nutrition, lack of adequate and functioning sanitation facilities, lack of adequate healthcare and access to health facilities, poorly maintained facilities, as well as instances of physical abuse and violence, are some of the conditions that prevail at Namibian Police holding cells and Namibia Correctional Services prisons. All of these are longstanding concerns and issues that have regularly been raised by the Ombudsman over the last two decades, back to 2006⁷², without much movement from the Namibian state to improve conditions and treatment of persons deprived of their liberty.

Recommendation:

The State should:

- **Address overcrowding:** take immediate steps to address the issue of overcrowding in police holding cells and correctional facilities. This may involve implementing alternative sentencing measures, expanding facilities, or increasing the use of pre-trial release options.
- Heed recommendations from the Office of the Ombudsman, and others, to improve conditions and upgrade facilities at Namibian Police holding cells and Namibia Correctional Services prisons across the country.
- **Ensure adequate nutrition:** Ensure that all persons deprived of their liberty have access to nutritious meals that meet their dietary needs.
- **Upgrade sanitation facilities:** Access to adequate and functioning sanitation facilities is crucial for maintaining hygiene and preventing the spread of diseases.

⁷¹ <https://ombudsman.org.na/wp-content/uploads/2023/08/2022-ANNUAL-REPORT.pdf>

⁷² <https://ombudsman.org.na/wp-content/uploads/2022/09/POLICE-CELLS-REPORT-2006.pdf>

- **Improve healthcare access:** take necessary measures to ensure detainees have access to timely and appropriate healthcare services, including medical treatment and mental health support.
- **Prevent physical abuse and violence:** prevent instances of physical abuse and violence against detainees.
- **Maintain facilities:** ensure proper maintenance of police holding cells and correctional facilities is essential for ensuring a safe and humane environment for detainees.
- **Accountability and monitoring:** establish robust mechanisms for monitoring and accountability to ensure that standards of treatment and conditions of detention are upheld.

Treatment of aliens, including migrants, refugees and asylum-seekers (arts. 7, 9, 12, and 13)

31. The food security and nutrition situation of refugees housed at the Osire refugee camp, in the Otjozondjupa Region, have been described as “quite alarming” by the UNHCR Representative for Namibia, Monique Ekoko, as recently as December 2023⁷³. Aside from a lack of food, lack of livelihood or employment opportunities and access to adequate healthcare were also conditions noted as prevailing among the roughly 7,000 refugees housed at the camp. Furthermore, in response to a call for submissions to this report, the Legal Assistance Centre (LAC), noted on the issue of treatment of refugees by the Namibian state, that they see “increasing cases of unlawful arrest and detention of refugees at local police stations”. The LAC also observed that lack of transport and language barriers were significantly contributing to isolating Osire refugee camp residents, preventing them from finding work or creating sustainable sources of income.

Recommendation

The State should:

- The Namibian Government and the relevant and responsible UN agencies, such as the UNHCR and the World Food Programme, should do more to ensure that refugees housed at the Osire refugee camp have adequate access to food and water;
- The treatment of refugees by various Namibian state agencies, such as the Namibian Police, should be investigated and reforms instituted where necessary.
- **Immediate food assistance:** Prioritize providing immediate food assistance to refugees at Osire camp to address the alarming food security situation. This

⁷³ <https://neweralive.na/posts/osire-refugees-health-compromised>

may include distributing food aid, establishing community gardens, or implementing cash-based assistance programs.

- **Livelihood and employment opportunities:** create livelihood and employment opportunities for refugees to enable them to earn a sustainable income. This may involve skills training programs, vocational education, or facilitating access to job opportunities in nearby communities.
- **Access to healthcare:** Ensure refugees have access to adequate healthcare services, including medical treatment, preventive care, and mental health support. This may require strengthening healthcare facilities within the camp or facilitating access to healthcare services in nearby communities.
- **Protection from unlawful arrest and detention:** Implement measures to prevent unlawful arrest and detention of refugees by local authorities. This may involve sensitising law enforcement officials about refugee rights and providing legal assistance to refugees who face arbitrary detention.
- **Addressing transportation and language barriers:** Address transportation challenges and language barriers that hinder refugees' integration and access to opportunities outside the camp. This could involve providing transportation services or language interpretation services to facilitate communication and mobility.
- **Empowerment and community engagement:** Promote empowerment and community engagement initiatives within the camp to foster resilience and self-reliance among refugees. This may include supporting community-led initiatives, promoting social cohesion, and involving refugees in decision-making processes.

Access to justice, independence of the judiciary, and fair trial (arts. 2 and 14)

32. The Legal Aid Directorate, in the Ministry of Justice, remains woefully under-funded, while there have been reports over recent years of legal practitioners overcharging the directorate and the Namibian Government being unable to pay lawyers⁷⁴. The courts have noted that the costs of accessing justice are “relatively high in Namibia”⁷⁵.

33. Namibia’s communications surveillance framework has been considerably enhanced by regulations authorising Subscriber Module Identification (SIM) registration and data retention under Part 6 of Chapter V of the Communications Act (No. 8 of 2009)⁷⁶. The Communications Act and the Namibia Central Intelligence Service Act (No. 10 of 1997) both provide for a judicial officer to authorise interception of communications. While the general requirement for a judge or magistrate to authorise interceptions and metadata access should be welcomed, the framework lacks several key provisions for

⁷⁴ <https://www.namibiansun.com/news/no-more-state-legal-aid2021-02-19>

⁷⁵ <https://ejustice.moj.na/ABOUT%20US/Pages/AccessToJusticeandLegalRepresentation.aspx>

⁷⁶ See Right to privacy (art. 17)

robust and independent oversight. For example, the framework does not make provision for specialist judges or courts to oversee these decisions, which would help ensure judicial oversight that is conversant in the specific legal and technical questions related to communications surveillance and human rights, and adequately resourced for this function. The oversight falls short of the test, established by the South African courts in *amaBhungane*, for decisions that afford the right to a fair trial. In those proceedings, the court found that the South African Parliament must amend the law to account for the one-sided nature of interception decisions, which may call for the introduction of a 'public advocate', a panel of judges, or other safeguards.⁷⁷

Recommendations

The State should:

- **Addressing Funding Challenges in Legal Aid:** adequately fund and resource the Directorate of Legal Aid in order to improve access to justice and a fair trial;
- Reform Namibia's communications surveillance framework to make provision for specialist judges or courts that are conversant in the specific legal and technical questions related to communications surveillance and human rights, and are adequately resourced for this function.
- **Fair compensation for legal practitioners:** Implement mechanisms to ensure fair compensation for legal practitioners providing services to the Legal Aid Directorate.
- **Strengthen oversight:** Enhance oversight mechanisms to monitor the use of funds allocated to the Legal Aid Directorate and ensure they are utilized effectively and efficiently.
- **Improving communications surveillance framework:** specialist Judicial Oversight: Introduce provisions for specialist judges or courts to oversee decisions related to communications surveillance.
- **Independent oversight mechanisms:** establish independent oversight mechanisms to review and monitor communications surveillance activities.
- **Transparent Processes:** ensure transparency in the authorization and implementation of communications surveillance measures..
- **Public accountability:** foster public accountability by providing avenues for affected individuals or civil society organisations to challenge surveillance decisions and seek redress for any violations of rights.

Right to privacy (art. 17)

34. The right to privacy is under threat as mandatory Subscriber Module Identification (SIM) registration is implemented through regulations for Part 6

⁷⁷ Above n 94 at 99.

of Chapter V of the Communications Act (No. 8 of 2009) for communications surveillance purposes⁷⁸. The SIM registration regulations come into full force from April 2024. While the dominant rationale for SIM registration is that it assists in detecting and investigating crimes and security threats related to the use of ICTs, there is no clear empirical evidence that SIM registration policies lead to a reduction in crime.⁷⁹ On the other hand, privacy advocates link SIM registration policies to an increased risk of identity theft, both by requiring the collection of detailed identity-related information for millions of communications users and by incentivising professional criminals to secure fraudulently registered SIM cards.⁸⁰ This is profoundly counterproductive to Namibia's other key digital policy priorities, including the Data Protection Bill and the Cybercrime Bill⁸¹. Mandatory SIM registration also impacts communication privacy, by mandating that a person's identity is linked to their communication; this raises special implications for groups who are considered more vulnerable to communications surveillance or who have a particular need for confidential or anonymous communications, such as journalists or whistleblowers.⁸² SIM registration policies are also considered to be harmful to digital inclusion, as they create an additional barrier to connecting people to ICTs, especially in more marginal communities that are less likely to have access to identity documentation.⁸³ As SIM registration policies also create costly obligations for communications service providers, including the cost of additional staff and systems for registration and record-keeping costs, these policies are also linked to likely increases in the costs of communication,⁸⁴ and other economic harms.⁸⁵ In sum, SIM registration policies are linked to a range of harms while there is significant doubt that they fulfil their central policy objective of combating crime. The absence of clear necessity and proportionality calls into question the rationality of mandatory SIM registration for Namibia.

35. At the same time that SIM card registration is being implemented in 2024, accompanying data retention regulations for Part 6 of Chapter V of the Communications Act (No. 8 of 2009) are also being implemented for communications surveillance purposes⁸⁶. The Namibian communications surveillance framework mistakenly assumes that communications data is less sensitive than the content of communications, and accordingly provides fewer protections and safeguards for its access. This is out of keeping with international best practice, which calls for all forms of communication data to

⁷⁸ <https://www.lac.org.na/laws/2021/7481.pdf>

⁷⁹ GSMA 'Mandatory registration of prepaid SIM cards: Addressing challenges through best practice' 2016, at 17, accessible [here](#).

⁸⁰ Donovan and Martin 'The Rise of African SIM Registration: The Emerging Dynamics of Regulatory Change' *First Monday* 19, 2014, at 22, accessible [here](#).

⁸¹ <https://drive.google.com/file/d/1Zh2B1qpzLiLo80LttqN0fbvhJbzW1TNq/view?usp=sharing>

⁸² UN Human Rights Council 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,' 2015, A/HRC/29/32, accessible [here](#).

⁸³ Above n 101, at 5.

⁸⁴ Jentzsch 'Implications of mandatory registration of mobile phone users in Africa', *Telecommunications Policy* 36, 2012.

⁸⁵ See for example Annan and Sanoh 'Mobile Infrastructure and Rural Business Enterprises: Evidence from SIM Registration Mandate in Niger' *World Bank Policy Research Working Paper No. 8278*, 2017.

⁸⁶ <https://www.lac.org.na/laws/2022/7797.pdf>

be subject to the same rigorous protections and safeguards against access. The harm is magnified by the extraordinary *length* – five years – for which communications data must be stored in terms of the Namibian framework. Best practice also dictates that the privacy violations inherent to communication surveillance demand that these powers be exercised only when necessary to respond to the most severe crimes and threats to safety and security, and only where less intrusive measures have failed. These elements are lacking or at best inconsistently applied in the Namibian framework. The regulations do not restrict access to communications data to investigations of more serious offences or security threats, suggesting that data may be sought even for minor offences. The regulations also require only that the information be “relevant” to an investigation, rather than necessary, and only that it would not be “expedient” to seek the information through other means. Similar conclusions were reached by the Legal Assistance Centre (LAC) in a June 2021 report. The LAC noted that “it seems likely that Namibia’s telecommunications data retention scheme might be found to be an unconstitutional infringement of the right to privacy overall, given the intrusion into the privacy of large segments of the population in a manner that has a questionable ability to serve the intended objectives. At the very least, it seems to be unconstitutionally faulty in some key aspects relating to the breadth of its coverage and the kinds of data required to be collected, the lack of procedural safeguards and the lack of attention to data protection principles. It does not seem to be appropriately proportional to its aims”⁸⁷.

36. As of January 2024 Namibia still does not have a data protection law on the statute books, even though one has been in the pipeline for more than a decade.

Recommendations

The State should:

- Considering the significant gaps and challenges in Namibia’s framework for communications surveillance, a full reform process is recommended to provide better protections and safeguards for communications and communication data, drawing on developing standards and best practice internationally and in the region;
- The Namibian Government must prioritise the finalisation and enactment of the draft Data Protection Bill, and table it before parliament.
- **Review policy objectives:** reassess the objectives of mandatory SIM registration and data retention regulations in light of concerns raised regarding privacy, security, and digital inclusion.
- **Enhance privacy protections:** Amend regulations to strengthen privacy protections and safeguards for individuals' personal data. This includes limiting

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https://www.lac.org.na/projects/grap/Pdf/constitutionality_of_telecommunications_data_retention_schemes.pdf

access to communications data to investigations of serious crimes and security threats, and ensuring that access is subject to judicial oversight and stringent criteria.

- **Align with international best practices** particularly regarding the treatment of communication data and the duration of data retention. Ensure that all forms of communication data are subject to equal privacy protections.
- **Develop Data Protection Legislation:** Expedite the enactment of comprehensive data protection legislation to provide legal safeguards for individuals' personal data and ensure compliance with international privacy standards. This legislation should address concerns related to data collection, processing, storage, and transfer.
- **Promote Digital Inclusion:** Mitigate barriers to digital inclusion by minimizing the administrative burdens associated with SIM registration and ensuring that vulnerable groups have access to ICTs without unnecessary hurdles.

Freedom of expression and right of peaceful assembly (arts. 19, 20 and 21)

37. In October 2023 a settlement agreement was reached between the state and the three applicants – the Legal Assistance Centre, the Institute for Public Policy Research (IPPR) and The Namibian newspaper – in a constitutional challenge of the Research, Science and Technology Act (No. 23 of 2004) before the High Court⁸⁸. According to the agreement, the Minister of Education should withdraw and replace specific sections of the regulations of the law that the applicants had flagged as unconstitutional within six months of the agreement becoming an order of the court. Furthermore, the Minister should repeal and/or replace certain sections of the law within 12 months of the agreement becoming an order of the court. The three applicants had argued that the law and regulations were “in conflict with the Constitution’s protection of the right to free speech and expression and the freedom of the press, and infringes on the right to freedom of thought, conscience and belief and the freedom to practise any profession, occupation or trade”⁸⁹. The settlement agreement is a win for constitutionally protected free expression.

38. With respect to media freedom, censorship and self-censorship continue to be a reality of media practitioners working for state-owned media such as the Namibian Broadcasting Corporation (NBC) and the New Era newspaper, according to the 2022 African Media Barometer (AMB)⁹⁰. At the same time, the AMB reported that media practitioners in the private and community media sectors also engaged in self-censorship in order to not upset advertisers or local community relations.

39. As for the right to peaceful assembly, in Namibia, as in other countries across the continent, civic space is shrinking. The apartheid-era Public Gatherings

⁸⁸ <https://drive.google.com/file/d/1un85f3BhWAVAI5j7zN9tORB5-hO8GKxk/view?usp=sharing>

⁸⁹ https://www.lac.org.na/news/inthenews/archive/2023/Govt_agrees_to_change_contested_research_law.pdf

⁹⁰ <https://library.fes.de/pdf-files/bueros/africa-media/19645-20221114.pdf>

Proclamation (AG 23 of 1989) remains in force and use by the Namibian state to control and/or regulate how Namibians exercise their right to peaceful assembly⁹¹. The Proclamation was most notably used to prevent youth activists from staging country-wide demonstrations against high youth unemployment on Namibian independence day – 21 March – in 2023. Despite the High Court banning public gatherings from taking place on 21 March 2023, demonstrators gathered briefly at designated protest venues in cities and towns across the country on the day. The Namibian Police dispersed these gatherings, with reports of harassment, intimidation and violence emerging, accompanied by arrests of some youth activists and even a prominent opposition Member of Parliament (MP)⁹². It should be noted that whereas the police, and courts, appear to regard the Proclamation as effectively bestowing on police the right to approve the going ahead of public gatherings of a certain sort, the Legal Assistance Centre (LAC) has argued that the Proclamation “does not give police the power to forbid a public gathering altogether, but the police do have the authority to place conditions on a public gathering if they believe that it may endanger the public, lead to violence or restrict other people’s rights”⁹³. On the question of constitutionality, the LAC noted: “*It is not clear that all of the restrictions contained in the law are reasonable or necessary for the purposes listed in the Constitution, but the law has not yet been challenged on constitutional grounds in any court case.*” The Office of the Ombudsman has also called for the Proclamation to be amended⁹⁴.

Recommendation

The State of Namibia should:

- Repeal and replace the apartheid-era Public Gatherings Proclamation (AG 23 of 1989), which appears to be an unconstitutional infringement on the right to peaceful assembly, with a framework that is in line with best practice and the spirit of the Namibian Constitution.

Rights of the child (arts. 23, 24 and 26)

40. The new Civil Registration and Identification Bill, which is of vital importance to birth registrations, has been drafted but has not yet been tabled in Parliament. The Child Care and Protection Act (No. 3 of 2015) makes provision for

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<https://www.lac.org.na/laws/annoSTAT/Public%20Gatherings%20Proclamation%20AG%2023%20of%201989.pdf>

⁹² <https://namibian.com.na/police-unleash-force-on-unemployed-youth/>

⁹³ https://www.lac.org.na/laws/summaries/Public_Gatherings.pdf

⁹⁴

<https://www.facebook.com/OneAfricaTelevision/videos/ombudsman-calls-for-amendment-of-public-gatherings-proclamation-of-1989-followin/3311030382462882/>

prescribed penalties for child marriage, but reporting is still very low. The draft Combating of Sexual Exploitation Bill has been around for a few years without being finalised and enacted. The Bill creates offences relating to the possession, production and distribution of child sexual abuse material. An assessment on behalf of the Institute for Public Policy Research (IPPR) has found that none of the criminal offences created in the proposed law raises significant human rights concerns in and of themselves. They are narrowly focused on objective harms, particularly those that might affect vulnerable individuals and children. They also contain appropriate exceptions and defences. Overall, the provisions are broadly consistent with comparable criminal offences set out in international instruments and those found in other jurisdictions.

41. Child hunger is a growing and pressing problem for Namibia. In 2023 the World Food Programme (WFP) reported that according to “the 2022 Global Hunger Index, Namibia suffers from a serious level of hunger, ranking 78th out of 116 countries”⁹⁵. With regard to child hunger, the WFP noted that malnutrition “is a growing concern” and that “24 percent of children under the age of 5 are stunted (reduced growth relative to age), 6 percent are experiencing wasting (weighing too little for their height) and 13 percent are underweight”. Equally shocking were the findings of the Cost of Hunger in Africa (CoHA) study for Namibia, which found: “In the last five years alone, it is estimated that 12,711 child deaths in Namibia were directly associated with undernutrition; Most of the health costs associated with undernutrition occur before a child turns 1 year old; 22.6% of all child mortality cases in Namibia are associated with undernutrition; 23.7% of all repetitions in school are associated with stunting; 43.1 % of the adult population in Namibia suffered from stunting as children.”⁹⁶
42. Another issue that is becoming a growing concern in Namibia is online child sexual exploitation and abuse. A report released in 2022 titled Disrupting Harm in Namibia noted: “In the past year alone, 9% of internet users aged 12–17 in Namibia were subjected to clear examples of online child sexual exploitation and abuse that included blackmailing children to engage in sexual activities, sharing their sexual images without permission, or coercing them to engage in sexual activities through promises of money or gifts. Scaled to the national population, this represents an estimated 20,000 children subjected to online child sexual exploitation and abuse in a single year.”⁹⁷ The study found that there was widespread lack of awareness about the prevalence of online child sexual exploitation and abuse.

Recommendations:

The State of Namibia should:

⁹⁵ <https://www.wfp.org/countries/namibia>

⁹⁶ https://www.nafsan.org/wp-content/uploads/2022/06/COHA-NAMIBIA_SUMMARY.pdf

⁹⁷ https://www.end-violence.org/sites/default/files/2022-09/DH_Namibia_2_1.pdf

- Finalise and table in parliament the Civil Registration and Identification Bill as a matter of urgency;
- Finalise and table in parliament the Combating of Sexual Exploitation Bill as a matter of urgency, as well as finalise and table the Cybercrime Bill;
- Prioritise the implementation of the recommendations of the Cost of Hunger in Africa (CoHA) report for Namibia;
- Should prioritise the implementation of the recommendations of the Disrupting Harm in Namibia report.

Participation in public affairs (arts. 25 and 26)

43. As indicated earlier, the status of the White Paper on Indigenous People remains unresolved as of December 2023.
44. Consultation of Indigenous communities and participation in decision-making processes by these communities around socio-economic developments affecting them are areas where Namibia continues to fall short. This issue was spotlighted by the Legal Assistance Centre (LAC) in a report on engagement with and treatment of local communities by the government and a mining company. The report noted: “The EMA (Environmental Management Act (No. 7 of 2007)) also provides for various stages of public participation of communities directly affected by the activities undertaken by the mining operations. These public participations are often limited to Traditional Authorities who seldom engage with the members of a particular community for input. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that communities should be given an opportunity to engage in these consultations freely, before the activities take place and that they should be consulted without any force or undue coercion. Public consultation includes all members of the public, especially directly affected community members.”⁹⁸ Despite these shortcomings in consultation and participation there are, for instance, emerging youth groups that are taking the lead in raising concerns about San issues, in particular social and economic obstacles they face. Groups such as the San continue to live at the fringes of Namibian society, where they are often subjected to discriminatory treatment⁹⁹.
45. In general, the Namibian Government as a whole has a problematic approach to consultation, with government-led policy and regulatory consultative processes mostly characterised by short notice invitations – meaning that valuable civil society or private sector insights or inputs are not sourced; a lack of inclusion and multistakeholderism – in that most consultative processes take place in the capital city and do not reach rural areas or impacted stakeholders; a lack of access to information – very often information is not shared with stakeholders to prepare adequately ahead of consultative meetings; short and sudden deadlines for submitting inputs or proposals. This

⁹⁸ https://www.lac.org.na/projects/lead/Pdf/Extractive_Industry.pdf

⁹⁹

<https://www.amnesty.org/en/latest/news/2021/10/namibia-discrimination-deprives-indigenous-san-people-of-the-right-to-health-as-tb-poses-serious-risk-to-their-lives/>

approach has been criticised over the years and in September 2023, the Institute for Public Policy Research (IPPR) noted that “in the first half of the year, various government authorities rushed to parliament a raft of bills that have to be enacted before the end of September 2023 in order to avoid greylisting by the Financial Action Task Force (FATF). Then in August the industrialisation and trade ministry, out of the blue, called for consultation on the long-languishing Investment Promotion and Facilitation Bill. Around the same time, in mid-August, the Ministry of Information, Communication and Technology, hosted another ‘consultation’ round on the draft data protection bill”¹⁰⁰. The IPPR observed that all of these supposed consultative processes did not involve “much substantive consultation” at all, and that these processes “really should not be a model for how things should be done in a supposed democracy”. The IPPR states that the view of many in civil society is that “what the Namibian government seems largely interested in is a pretence at consultation”. The institute proposes a framework for “meaningful engagement” between the state and civil society, which contains seven principles for engagement on law and policy matters.

Recommendations:

The State should:

- Revise and reform its approaches to and practices around law, policy and regulatory related consultations and bring them in line with best practice in democratic societies;
- Make every effort to ensure that state sector decision-making, service delivery and policy implementation are informed by the outcomes of multistakeholder, multidisciplinary consultative processes;
- Make every effort that marginalised and indigenous groups are included in all consultative processes around matters that directly impact them.

Rights of minorities (art. 27)

46. As already indicated, the status of the White Paper on Indigenous People remains unresolved as of December 2023. For the purposes of this report, the Legal Assistance Centre (LAC) submitted that although Namibia voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), it has not ratified it and considers all people indigenous to the country despite obvious historical facts. Indigenous people, because of a lack of representation, are often considered part of communities formally recognised by the government, but who do not share the same values and

¹⁰⁰ <https://ippr.org.na/blog/struggling-to-consult/>

needs. As a result, the minority unrecognised groups are often not consulted or do not participate in public consultative exercises and therefore cannot raise their concerns. Not having land of their own contributes greatly to the failure to address the needs of the minorities. There was no free, prior and informed consent (FPIC) in regard to the activities undertaken in the Okavango Basin and all locals have not been given an opportunity to participate in decision making concerning the activities¹⁰¹. They also are not benefitting from the so-called economic benefits of the projects, other than boreholes and a school structure. The political will to pursue projects that are detrimental to the access of natural resources by local people seemingly pushes the agendas and encourages interested stakeholders to pursue the activities without properly following legal requirements. This political will also undermines the government structures legally in place to regulate corporate activities. There has been no progress in regard to ancestral land claims by the San, and Basters, for that matter, and although the lands commission submitted a report, the government has not taken any steps to address these issues.

Recommendations

The State should:

- Ensure that the relevant legal and policy frameworks facilitate meaningful community involvement for the purpose it is meant to serve, rather than treat this issue as a mere ticking of the box exercise;
- Create mechanisms through which marginalised and indigenous groups and communities can report issues or concerns easily and effectively to relevant government departments.

¹⁰¹ https://www.lac.org.na/projects/lead/Pdf/Presentation-Oil_and_Gas_Conference_Namibia_2023.pdf