NANGOF Trust
Namibia Non-Governmental Organisations' Forum Trust
Advocating Networking Supporting

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NANGOF Trust SUBMISSION FOR THE EXAMINATION OF THE INITIAL REPORT OF NAMIBIA

Replies to the List of Issues E/C.12/NAM/Q/1 on article 11 to 14 of the ICESCR

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The Namibia Non-Governmental Organizations' Forum Trust (NANGOF Trust) is an umbrella organization of Civil Society Organizations (CSOs) constituted by Non-Governmental Organizations (NGOs), Community-Based Organizations (CBOs), and Faith-Based Organizations (FBOs) in Namibia.

The **NANGOF Trust** plays an important role in supporting Civil Society Organisations (CSOs) through services such as institutional capacity building, information sharing, networking and policy advocacy. NANGOF Trust is also the principal umbrella network, which uses the combined resources base of its membership to work towards the creation and sustenance of an enabling environment for NGOs.

Its role is to make the work of CSOs more visible and effective, to facilitate the process of policy formulation with increased participation of civil society, and co-ordinate the efforts of CSOs to ensure that the development needs of the poor and marginalized are addressed.

The NANGOF Trust is also designed to perform a watchdog role, participating in broad strategic planning for the civil society sector, lobbying government for financial resources for development and holding government accountable.

Put simply, the NANGOF Trust is conceived as a reference point to play a liaison role between CSOs, donors and other development partners, and government. Ideally it is the body that should offer strategic guidance on development priorities to donors and government.

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I. ARTICLE 11 – RIGHT TO AN ADEQUATE STANDARD OF LIVING INCLUDING THE RIGHT TO HOUSING

List of issues E/C.12/NAM/Q/1 (paragraphs 6, 19 and 21)

6. Please provide information on the measures taken to increase women's access to land, in practice, including updated information on the implementation of the Communal Land Reform Act No. 5 of 2002.

19. In view of the information provided in paragraph 44 of the report, please indicate the measures taken to provide for a more equitable distribution of land and resources among the State party's population. Please comment on reports that access to land is subject to an arduous and lengthy process.

21. Please provide updated information on the planned amendment to the Communal Land Reform Act. Please also provide updated information on the steps taken for water conservation, in particular in view of reports that the State party is facing further desertification. Please further indicate the measures taken to increase access to water by the population, including with regard to reducing the distances to drinking water sources.

Reply by NANGOF Trust

Communal Land Tenure

Since the Communal Land Reform Act of 2002 governs tenure reform in the communal areas in Namibia, the Ministry of Lands and Resettlement has introduced a project to register land rights in the communal areas. The land rights being registered are customary and leasehold, and may be existing or new rights. A customary land right is for a natural life of a holder and can be inherited by surviving spouse and in the absence of the surviving spouse; the children inherit the right. The period and duration of the leasehold vary according to land use and can be registered in the Deeds Registry office.

The registration process is implemented within the framework of The Namibia Communal Land Right Registration System. The system is developed to store data on communal lands for the whole country in such a manner that it should accommodate future integration with the commercial Deeds Registration System.

After an application of Right of Leasehold is granted and a deed of Leasehold is signed, the Communal Land Board Secretary ensures that the Right of Leasehold is registered in the name of the applicant in the prescribed register and the applicant is issued with a Certificate of Leasehold. It is the responsibility of the leaseholder to register the lease in the Deeds Registry Office. The Leasehold thus grants the lessees the opportunity to access financial capital to invest in their properties.

Land Redistribution

The reason most frequently cited by the Government to explain the slow pace of land acquisition is that it is not being offered enough land of sufficient quality, because white farmers do not want to sell their land, while those who do sell set high prices. Most of the farms acquired by government for resettlement purposes are located in the Hardap and Karas regions, areas not generally considered prime agricultural land, while the majority of affirmative action loan farmers have bought land in agriculturally better regions such Omaheke and Otjozondjupa.

The Permanent Technical Team for land reform proposed a target of 15 million ha by 2020, which amounts to 42% of all freehold agricultural land in Namibia. However the Minister of Lands used a target for land acquisition of 5 million ha by 2020, when he presented a technical budget brief to the National Assembly in 2014 (Minister of Lands and Resettlement, 2014b, p. 3). Although the targets as set out by the Minister in 2014 are much lower than those recommended by the PTT, they are very ambitious when it is taken into consideration that the MLR acquired only 2,3 million ha from 1990 to the end of 2014. This figure includes 54 farms amounting to 411,257 ha, which were transferred from the Ministry of Agriculture, Water and Rural Development to the MLR in the 1990s.

The willing buyer willing seller policy, while aimed at maintaining stability and national reconciliation, also creates unequal power relations between the landless, landowners and the state, and in effect protects the land owners. This is so because the state is dependant on the willingness of landowners to sell the land, putting the state and the landless in a weaker position.

Land redistribution in relation to poverty reduction also does not feature in the National Rural Development Policy of Namibia (Ministry of Regional and Local Government, Housing and Rural Development, 2012) or the National Rural Development Strategy 2013/14-2017/18 (Ministry of Regional and Local Government, Housing and Rural Development, 2013). **It remains to be seen whether the recently established ministry for poverty alleviation will integrate land redistribution within its strategic framework.**

A review of the criteria for resettlement conducted in 2008 decided that the requirement of an annual combined income of N$ 135,000 to qualify for land be dropped. This was done, implying that anyone regardless of his or her income can qualify for resettlement. The absence of a cap on annual income levels resulted in an employed elite of people capturing big benefits through resettlement. The Permanent Technical Team on Land Reform (PTT) found in 2004 that of all interviewed beneficiary households, 45% were wage earners and of those “74% were government employees based mainly in Windhoek” (Permanent Technical Team, 2005a, p. 49). Verbal evidence continues to suggest that elite capture of resettlement benefits is continuing. Regional governors, permanent secretaries - including the former Permanent Secretary in the MLR - business people and other employed people are known to have been allocated a parcel of land. The practical implication of this is that regardless of whether applicants earned a high salary or not, if they are landless they qualify for resettlement. It also implies that the resettlement program is not necessarily targeted for the poor. However, the Draft Resettlement Manual (Minister of Lands and Resettlement, 2008, pp. 16–17) proposed a social welfare model, which should focus on the needs of destitute and marginalised people and

"those who currently possess neither capital nor any other assets". Such a model would complement the current resettlement group schemes and should be implemented by line ministries focusing on social welfare programmes. "The function here of the MLR should be to make land available to and not to manage social welfare programmes".

Government has recently improved access to farming land for some communal farmers by adding freehold land to communal areas. This option for land reform was elaborated for discussion at the Land Conference in 1991, but was never adopted formally, despite the fact that it was ranked high in terms of equity impact relative to investment costs. More recently, however, the MLR acquired farms adjacent to communal areas in the south and west and handed them over to traditional authorities for allocation. It is not clear whether this is part of a revised strategy, or whether it was politically motivated.

Women's Right to Land

Under most customary systems, women – at least traditionally – do not own or inherit land. This is partly because women are perceived to be part of the wealth of the community, and therefore cannot be the locus of land right grants. For most women, access to land is via a system of vicarious ownership through men such as husbands, fathers, uncles, brothers and sons. Customary rules, therefore, have the effect of excluding females from the clan or community entity. Widowed women traditionally do not inherit land, but are allowed to remain on the matrimonial land and home until their death or remarriage. Over the past decade, however, even this social safety net has eroded, with male heirs tending to sell off their rights to the land, leaving widows landless and homeless.

In general, there are four basic reasons for women's lack of access to property, namely – laws that discriminate against women, the prejudicial application of property laws, women's lack of awareness about their legal rights, and women's lack of confidence to take action when their rights have been violated.

The provisions of the CLRA have been criticised for not addressing the gender bias in customary law. By not explicitly providing for the right of women to apply for land in their own names without such rights being mediated and legitimized through marriage, the *Land Bill* leaves the regulation and administration of rights of women to land in the domain of customary law thereby contributing to the perpetuation of a system that has consistently disadvantaged women. While customary law provisions need to be handled sensitively, legal provisions that strengthen the rights of women will contribute towards improved land rights for women.

It should be pointed out in this regard that any formal strengthening of women's rights to land needs to be accompanied with guidelines to regulate the widespread practice of stripping women of essential assets after their spouses have died. Such 'property grabbing' is still common in areas that are governed by matrilineal inheritance systems.

Amendments to Communal Land Reform Act

In 2010 a new *Land Bill* was released for consultation, with the aim to combine the Commercial (Agricultural) Land Reform Act 1995 with the Communal Land Reform Act, 2002 into one Land Act. The first difference between the Communal Land Reform Act of 2002 and the *Land Bill* is that the latter replaces Communal Land Boards with Regional Land Boards. The functions of Regional Land Boards will no longer be limited to communal areas but will include a number of functions related to the implementation of the National Resettlement Programme. These functions will include the identification of regional resettlement needs and appropriate land for acquisition and allocation in the regions, receiving and processing resettlement application forms, short listing recommended beneficiaries and monitoring resettlement farms and regional resettlement projects and promoting development. With these proposed changes to the original Acts the MLR is decentralising a number of resettlement functions

However, the provisions of the Bill still do not give Regional Resettlement Committees autonomous decision-making power. In essence they only make recommendations to the Land Reform Advisory Commission about successful beneficiaries. Ideally Regional Councils should have the power to take all major decisions with regard to resettlement, including the selection of beneficiaries. These powers should be subject to a review by the Land Reform Advisory Commission according to clear and transparent criteria to ensure that such decisions conform to national policies and criteria for resettlement.

The functions of Regional Land Boards will include dealing with land disputes. These proposed provisions are an alternative to customary land rights holders and in particular women who do not feel that traditional leaders and customary law offer them a fair hearing and decision. However, it will be important to lay down clear mandates for different levels of dispute resolution in communal areas, starting from the most accessible – village headmen – through the hierarchy of traditional authority to Land Boards. In this regard the provisions of community courts also need to be taken into account.

In terms of the new Land Bill, traditional leaders will continue to play a central role in the administration of customary and other land rights, although Regional Land Boards do have supervisory functions. The new Bill retains the provisions of the Communal Land Reform Act of 2002 in terms of which the Chief of a traditional community, or the Traditional Authority allocates or cancels customary land rights.

Leases for a period of more than ten years need the approval of the Minister of Lands and Resettlement before they can be registered. Until the regulations are amended it must be assumed that applications for leasehold that exceed 50 ha will also continue to require the Minister's approval. The Minister thus continues to enjoy considerable powers with regard to the approval of long term lease agreements for large areas, typically what large scale international agribusiness require.

Under the current legal framework traditional leaders may be tempted to sacrifice the interests and rights of their subjects to the interests of politicians and large-scale investors, with land rights holders having no recourse to the law. There is nothing in the original and proposed new law that compels traditional authorities to consult members of the traditional communities they represent about decisions with regard to

land transactions. Instead of supporting existing accountability mechanisms that are crumbling under a variety of pressures, the Communal Land Reform Act and the new Bill provided traditional authorities with more powers than they had. Accountability downwards towards land rights holders has been replaced by accountability to the state through Land Boards.

Upwards mobility for resettled farmers

The resettlement program places a ceiling on allocated land parcels, making it difficult to acquire more livestock to move into commercial farming. Subleasing of resettled areas is prohibited; hence options for enlarging grazing areas are limited. The affirmation action loan scheme requires 150 livestock units or more to qualify, yet resettled farmers will not be able to reach 150 LSU given that they are limited to 1 farming unit

Illegal Fencing

Studies conducted by the Legal Assistance Center suggest that politically well-connected individuals have fenced off large tracts of communal areas, particularly in the Omusati Region, claiming that the authority to do so was obtained from the Traditional Authority having jurisdiction over the particular area. In some cases individuals have applied to the relevant Communal Land Board having jurisdiction over the area for authorization for the retention of any such fence on existing land. The areas of land which have been fenced off vary in size but in some cases are as large as 10,000 ha. The effect of this fencing-off means that powerful individuals have appropriated communal land for their personal use at the expense of many communal farmers who have inadequate access to land for grazing. The farmers most adversely affected by illegal fencing are small-scale subsistence farmers. While these farmers express considerable dissatisfaction with the process of enclosure, most fear some form of retribution should they openly challenge the practice.

The most common complaint raised by subsistence farmers against illegal fencing is the negative effect it has on diminishing grazing land, both in size and quality, and the inability to look for lost animals in the fenced-in area. The diminished grazing land has resulted in weaker animals that develop at a slower rate. To ensure their animals receive adequate nutrition, the owners frequently have to buy fodder to supplement their diets.

Despite widespread criticism against illegal fencing in forums such as parliament, little progress has been made on how to deal with illegal Government yet has to speak out against illegal fencing. The Government could immediately take action against illegal fencing by formulating and publishing a policy on the issue and by using the most serious cases as test cases for adjudication

List of issues E/C.12/NAM/Q/1 (paragraph 23):

23. In view of the large number of informal settlements, please provide updated information on forced evictions and on the measures taken to increase social housing. Please also provide information on the impact of housing subsidies and indicate whether the State party intends to increase housing subsidies.

Reply by NANGOF Trust

Development of the Flexible Land Tenure System (FLTS)

The concept of the FLTS is derived from the need to create upgradeable alternative land tenure options to informal settlements, which complements the current formal system of freehold tenure. These tenure options should be administered through a parallel interchangeable property registration system obtained in various steps. The FLTS is supported by the Flexible Land Tenure Act, Act No. 4 of 2012. The Act provides for the application of this system in urban areas and peri-urban areas that are within the municipal boundaries. Specific objectives of the Act address the following:

- The creation of alternative forms of land titles that are simple and cheaper to administer than the existing freehold land title
- The provision of secure tenure to low income households in informal settlements or to those who are provided with low income housing
- To empower the persons concerned economically by means of these rights

The FLTS also offers the registration of individual rights under group ownership, which is currently unique to this process. This legislation provides a response to the expressions of frustration by communities in Windhoek, Oshakati, Eenhana, Oshikango and other proclaimed towns who have been unable to survey and register their land rights.

The development of the FLTS until its current status has taken over a decade, realised that it was important to involve and engage the private sector, academics, NGOs and research institutions to improve capacity and benefit from on-going research work in the development of training courses, software and management tools. NGOs have been part of the processes from inception, piloting stages and workshops. It is expected that should the Government continue to stall the process or continue at the current slow pace of implementation, the NGOs will lobby and pressure Government to fulfil the expectations on secure tenure that were created among disadvantaged communities throughout the initial stages.
Concerns are raised regarding the capacity of particularly smaller local authorities to implement the FLTS. It is also estimated that the institutional framework for the establishment of LROs will be very costly, as will the training of its staff be.

Apart from human capacity challenges, the system depends on the availability of land to plan for settlements. Existing procedures for establishing and planning new settlements are cumbersome and slow and there has been little effort made in developing new planning legislation. One of the concerns regarding the FLTS is whether land hold titles can be used to access credit and thus be recognised by financial institutions. Title deeds under the freehold system can be used as collateral to borrow money from financial institutions, while informal land tenure systems are not regarded as collateral by these institutions.

It would seem that most land hold title schemes will never be upgraded to freehold title due to the high cost implications for the poor- as it is estimated that it will cost

about N$500.000 to upgrade a small scheme of 50 plots to freehold over a period of 3 years. Thus one can critique that the surveying and registration of land hold titles will slow down the delivery of freehold titles to the poor, and will result in the duplication of land surveying and registration.

II. ARTICLE 12 – RIGHT TO PHYSICAL AND MENTAL HEALTH

List of issues adopted by the Committee (paragraphs 24 - 26)
24. Please indicate the measures taken to combat harmful traditional practices against women and girls, including female genital mutilation, as well as so-called sexual initiation practices. Please indicate whether these practices are explicitly criminalized and whether there have been prosecutions in respect thereof. Please also indicate the measures taken to raise awareness among the general public that such practices violate girls' and women's dignity and have severe consequences for their physical and mental health and that the so-called sexual initiation practices should be qualified as forms of rape, incest and assault.
25. Please indicate the measures taken to improve the quality of health-care services and to increase the number of skilled health professionals. Please also provide updated information on the measures taken to reduce HIV infection rates and increase access to antiretroviral therapy, as well as on the measures taken to prevent mother-to-child HIV transmission. 26. Please provide information on the measures taken to reduce maternal, infant and child mortality. Please also indicate whether the State party has taken any measures towards easing restrictions on and facilitating access to safe abortions, as well as to increase access to sexual and reproductive health services. Furthermore, please indicate the steps taken to finalize the draft reproductive health policy.

Reply by NANGOF Trust

Although a bill on human trafficking was in the final stages before being submitted to the cabinet and then to Parliament, no extensive consultation was conducted to inform the content of the bill. No legislation is in place on community courts and harmful customary practices. No comprehensive and recent data is available on gender based violence and harmful traditional practices. Prosecution rates for domestic violence remain low, leading to women withdrawing cases.

III. ARTICLES 13 AND 14 – RIGHT TO EDUCATION

List of issues E/C.12/NAM/Q/1 (paragraph 27):
27. Please indicate the measures taken to ensure access to free and compulsory formal basic education through implementation of the provisions of the Constitution, and please provide data on primary school attendance, disaggregated by sex, race,

disability and geographic location. With reference to paragraphs 387 to 389 of the report, please indicate the impact of the measures taken to improve access to education for marginalized children. Please provide statistical data on the number of children enrolled in public and in private schools, disaggregated by sex and geographic location.

Reply by NANGOF Trust

According to data released by UNESCO for the period 2007 – 2012, Namibia has a total of 574,000 pupils enrolled in primary and secondary education. Of these pupils, about 415,000 (72%) are enrolled in primary education, 124 000 in lower secondary and 34 000 in upper secondary. Although youth within the age group 15-24 may still be in school and working towards their educational goals, it is notable that approximately 5% of youth have no formal education and 19% of youth have attained at most incomplete primary education, meaning that in total 24% of 15-24 year olds have not completed primary education in Namibia.

According to Education Policy and Data Center (2014) extraction of DHS dataset, 7% of children of official primary school ages are out of school If one considers the proportion of children out of school by different characteristics wherever data is available approximately 7% of boys of primary school age are out of school compared to 6% of girls of the same age. For children of primary school age in Namibia, the biggest disparity can be seen between the poorest and the richest children. Nearly 29% of female youth of secondary school age are out of school compared to 32% of male youth of the same age. For youth of secondary school age, the biggest disparity can be seen between the poorest and the richest youth.

The gross enrolment rate in primary education is 109% for both girls and boys combined. This decreases to 83% in lower secondary, with a student transition rate to secondary school of 82%. The primary net enrolment rate is 88% and the primary completion rate is 85%. Data also suggest that of the first 5 grades of primary in Namibia, students are more likely to repeat grade 5. The repetition rate in grade 5 is 21.9% (for both males and females), which is 6.5 points higher than the average repetition rate across primary grades of 15.4%

Although the percentage of female enrolment at primary level is higher than that of male enrolment, the percentage of female enrolment decreases at secondary level. Some of the reasons for withdrawal from primary education are the need to work at an early age or to care for younger siblings. At the secondary level, the reasons for withdrawal are more likely related to behavioural factors. Teenage pregnancy accounts for a sizable number of female dropouts. Young women might be expelled because of pregnancy or might be denied the opportunity to resume their education after childbirth. It is discriminatory to deny a girl child the opportunity to resume her education after her pregnancy, whereas the boys who father such children are allowed to remain in school.

If one uses learning as an indicator of the quality of education, and literacy is used as the measurement for learning, Namibia ranks at the 36 percentile in access and at 38 percentile in learning when compared to other low and middle-income countries. Namibia's literacy rate is 87% among the youth population; this is lower than the

average youth literacy in other upper middle-income countries. According to the most recent SACMEQ reading and SACMEQ math assessment results for Namibia in Grade 6, administered in 2007, nearly 14% of test takers in Namibia performed below the lowest performance benchmark in reading, compared to an average of 17% for other countries that took the same assessment.

The government does not cater for early child hood education. Parents are required to pay fully for private early child hood education. Civic organisations continue to be the primary providers of early childhood education. Although civic organisations have continued to call for the integration of early childhood education into mainstream education, and though government has on numerous occasions agreed that this should be case, no substantial steps have been taken by government in this regard.

Measures taken to ensure free primary education to all children.

It is commendable that as of January 2016, both primary and secondary education is free. Parents are therefore no longer required to pay for both levels of education. Theoretically Government currently provides NAD500 for each learner. During this transition stage it is however envisaged that parents will be asked to make voluntary contributions to the School Development Fund, although they are not required to do so. School Development Funds primarily derive their income from the initiatives of individual schools through various fundraising activities, including voluntary contributions by parents who can afford to do so. Student representative organisations and civic organisations continue to advocate for the provision of free or subsidised tertiary education.