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Human Rights Committee (CCPR)

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Geneva, Switzerland

Joint Report

submitted by

**Saving Okavango's Unique Life (SOUL) Alliance,
the Women's Leadership Centre Namibia
and the Economic and Social Justice Trust Namibia**

to the

Human Rights Committee

on the occasion of the consideration of the

List of Issues for

Namibia

During the Committee's 137th session

(27 February to 24 March 2023)

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About the submitting organizations:

Saving Okavango's Unique Life (SOUL)¹ is an alliance of Namibian, southern African and international civil society organizations, activists and scientists promoting social, climate and environmental justice. We have been active in our resistance to fossil fuel exploration – in particular shale oil/gas - in Kavango East and West, in Namibia and Botswana. We are committed to ensuring a future for the more than one million people who rely on this unique ecosystem for their every need. A future that secures livelihoods, ensures the survival of endangered species and creates an ecological rampart against the catastrophic effects of human-induced climate change that is an example for the whole world to follow.

The **Women's Leadership Centre Namibia**² is The Women's Leadership Centre is a feminist organisation based in Windhoek, Namibia. Our core activity is to promote women's writing and other forms of personal and creative expression as a form of resistance to discrimination and oppression embedded in our patriarchal cultures and society, with the aim of developing indigenous feminist activism in Namibia. We envision a society in which all women actively engage in shaping the politics, practices and values of both public and private spaces, based on the knowledge of their full human rights as persons and as citizens.

The **Economic and Social Justice Trust (ESJT)**³ Namibia was formed in 2012 by a group of activists to promote struggles for economic and social justice. The key aims of the Trust are to enhance and promote the social and economic rights of Namibians. This includes the fair and equitable distribution of resources with a particular emphasis on enhancing the rights of the economically and socially excluded Namibians. The Trust also advocates for fundamental changes in the economic system to effect redistribution in favour of the poor.



Saving Okavango's Unique Life (SOUL), the Women's Leadership Centre and the Economic and Social Justice Trust Namibia request that the Human Rights Committee include the following questions in the List of Issues (LOI) for Namibia:

1. What are the measures taken by the State party to ensure that climate change and energy policies, and specifically the policy on the extraction and export of oil and gas, consider the differentiated and disproportionate impact of climate change and environmental degradation on human rights in Namibia, especially on rural and indigenous communities and women?
2. What are the measures taken to ensure that the authorization of oil and gas exploration and development in the Kavango regions East and West follows the requests of UNESCO (44th session of the World Heritage Committee, July 2021⁴):and IUCN (Motion 136⁵, September 2021)?
3. What are the measures taken to ensure that the authorization of oil and gas exploration and development in the Kavango regions East and West does not violate human rights of Namibians (in particular indigenous communities, rural women and girls rights to clean air, water, access to food and health care)?
4. When and how will the State party conduct robust and strategic environmental and human rights impact assessments in relation to oil and gas exploration activities in the State party, particularly their impact on indigenous communities and rural women and girls, adopt appropriate mitigation and protections measures, and ensure the meaningful participation in consultations and decision-making processes in that context?
5. How does the State party ensure that any decisions on oil and gas exploitation in the Kavango regions East and West are subject to the full, prior and informed consent (provided the different tribe languages) of local communities, including women and girls?

I. Background on the Planned Oil and Gas Development in Namibia – CEDAW concerns

With reference to the concluding observations on the sixth periodic report of Namibia by the Committee on the Elimination of Discrimination against Women (CEDAW/C/NAM/CO/6, 4 July 2022)⁶, as well as acknowledging and highlighting the conclusion of the report [A/77/226](#) of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, we want to draw your attention to **concerns regarding the human rights impacts of ongoing oil and gas exploration and development plans in Namibia's Kavango regions East and West.**



As the Committee on the Elimination of Discrimination against Women (CEDAW) has recognized, oil and gas extraction – particularly via the method of hydraulic fracturing - threatens human rights through its direct impacts on local communities and ecosystems, and its indirect effects on the global climate. This includes particularly acute risks to water sources and health and a significant contribution to global warming. In view of these harms, the development of oil and gas in the Kavango regions East and West—home to critical freshwater sources on which numerous Indigenous Peoples and local communities depend, in a semi-arid, drought-prone country—jeopardizes the human rights of the affected communities, including the rights to water, health, and livelihood. Moreover, unlocking oil and gas reserves in Namibia’s Kavango basin would lead inexorably to a significant increase in greenhouse gas emissions. Those emissions would exacerbate climate change, which disproportionately harms indigenous and marginalized communities, thereby also heightening the vulnerability of rural women and girls in the affected area, and compounding the adverse local impacts of oil and gas extraction.

The Committee already addressed the issue and asked Namibia in the context of the 80th to provide information specifically on⁷:

- (a) Concrete measures taken to ensure that the authorization of oil and gas exploration and development in the Okavango region does not violate the rights of rural women and girls to access to clean water, food and health care, considering the risks that oil drilling and fracking presents to water depletion, contamination and other pollution-related health hazards;
- (b) Measures taken to ensure that climate change and energy policies, and specifically the policy on the extraction and export of oil and gas, including through fracking, take into account the differentiated and disproportionate impact of climate change on women, especially rural and indigenous women;
- (c) Steps taken to undertake environmental and human rights assessments regarding the impacts of the oil and gas exploration activities, particularly on women and girls, and to adopt appropriate mitigation and protections measures.

However, Namibia refused to answer the question related to “Disaster Risk Reduction and Climate Change”.⁸ This has prompted CEDAW to express concerns about the absence of information in the concluding observations on the sixth periodic report of Namibia (CEDAW/C/NAM/CO/6, 4 July 2022)⁹,

II. Background on the Planned Oil and Gas Development in Namibia (Kavango regions East and West) - ReconAfrica

According to its own statements, the Canadian-based company ReconAfrica Limited plans to explore the so-called Kavango Basin and, in the case of a promising discovery, to extract oil and/or gas mainly from shale layers in the licensed area in Namibian and Botswana for a period of at least 25 years.¹⁰ (ReconAfrica holds 95% of the license on the Namibian side; other 5% belong to the state-owned company National Petroleum Corporation of Namibia (NAMCOR).

The petroleum agreement provides ReconAfrica with the exclusive right to obtain a 25-year production license (with a possible 10-year renewal). The state-owned company Namcor still holds



an interest of 10 per cent in the license but wants to sell 5 per cent of that to ReconAfrica. On the Botswanan side, the company holds the right to enter into a 25-year production license with a 20-year renewal period.

The company has already finished a first round of exploratory drillings and seismic surveys in Namibia in 2021 and – despite opposition at local, national and international level – has moved forward with a multi-well drilling program and more seismic surveys in 2022.

The licenses awarded in Namibia and Botswana are spread across ecologically highly sensitive - in some cases very arid – protected areas. The region is also home to one of the last large free-ranging elephant populations in the world.¹¹ The largest transfrontier conservation area in the world (the Kavango-Zambezi Transfrontier Conservation Area, abbreviated KaZa) is also affected.¹² To the north, the licenses directly border on the Kavango River, which flows in the globally unique inland delta and wetland, the Okavango Delta.¹³

The Kavango Zambezi Transfortier Conservation Area (KAZA) was not only created to serve as the world's largest cross-border conservation area but also to serve as a huge peace park between the five countries of Angola, Botswana, Namibia, Zambia and Zimbabwe, who share political differences and a history of trouble. In times like these, when humanity faces the real existential threat of World War III and global warming (one of the main driving forces of future wars), the vision of KAZA is obviously the only reasonable thing to do in order to avoid wars and a massive loss of unique precious biodiversity.

Both the Namibian and Botswana lease areas encompass land that has historically and traditionally been occupied by indigenous First Nations San communities. To date the opinions, wishes and aspirations of the First Peoples have not been properly considered – if at all. They have not been properly consulted by either government – despite existing obligations in terms of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to which both Namibia and Botswana are signatories. These failures contravene state obligations to protect the rights of rural and Indigenous women and to ensure they have an opportunity for full and equal participation in public life, including decision-making on such proposed natural resource extraction activities.

ReconAfrica has constantly and repeatedly highlighted that their main target are possible shale resources in the Kavango basin which can only be extracted using the hydraulic fracturing technique. Any so-called conventional resources (those exploitable by drilling) will be merely a by-catch. ReconAfrica clearly confirms the need for fracking operations in the July 2020 report where the company also compares the Kavango Basin with the Karoo/Permian Whitehill Basin in South Africa.¹⁴

What's really worrying, is that Recon is very confident to get access to water over the envisaged production period of at least 25 years – although they are clearly operating in a very arid area:

"Of tremendous concern in South Africa is water, a significant requirement for unconventional plays requiring fracture stimulation. Shell is looking at conservation, recycling, and brackish water as to not compete with locals for fresh water resources. ReconAfrica's situation is significantly better in that surface rights and access are held by the government, and abundant ground water supplies should be a source of building, not breaking, relationships with the local population. (page 17)"



There are numerous proven risks and impacts related to the development of fracking projects, such as industrialization of former rural areas, heavy freshwater consumption, water and soil contamination, public health impacts (in particular for women and children) and a significant contribution to global warming.¹⁵

However, with growing public opposition, the company now denounces the idea that fracking will play a role in the extraction of the targeted fossil fuels. Even without fracking, it is clear that a step-by-step industrialization of an almost untouched landscape will be the consequence of oil and gas exploitation in the licensed areas. This process will require a huge amount of fresh water in a vast water-deficient region – with long-term impacts for the Cubango-Okavango River Basin and eventually the World Heritage Site.

A SOUL petition launched a series of hearings in September and October 2021. They revealed that ReconAfrica

1. openly promoted shale oil/gas development (fracking) in the Kavango Basin before opposition arose after their plans became public knowledge¹⁶;
2. operated with unlined pits in contravention of good practice, therefore directly risking contamination of soil and groundwater¹⁷,
3. drilled illegally without the required water permits¹⁸;
4. refused to give ministry officials access to one of its drilling sites¹⁹; and
5. seized land without proper land leases (leading to one court case)²⁰; and

Aerial photographs from September 2021, also show that ReconAfrica has bulldozed land for a test oil well inside the Kapinga Kamwalye Conservancy, a protected wildlife area in northeastern Namibia, without proper permissions. Local leaders were even said to have been offered jobs in return for their silence²¹

The only sources of water upon which communities can depend in the area are ground water and the Kavango/Okavango River and its tributaries. The Okavango river is the sole inflow into the Okavango Delta, with its delicate ecological balance of inflow of water, evaporation and biodiversity. This unique hydrological regime is one of the key reasons for its World Heritage designation and Outstanding Universal Value. Any impact on the quantity and quality of water flowing into the Delta will have severe and significant negative social and environmental impacts, and will violate the World Heritage Convention, to which both Namibia and Botswana are signatories.

The fact that the proposed oil and gas development over the envisaged lifetime of at least 25 years in the licensed area risks having a huge and irreparable detrimental impact on the conservation focus of KAZA, as well as protected and future world heritage sites - such as the Okavango Delta – demands that UNESCO further engages now with all relevant governments on the issue. The cumulative impacts must be assessed before the company announces that it intends to enter the production phase. With several dam projects planned in Angola and expected to have an influence on the water quantity for the Okavango Delta²², the question of how a water thirsty oil and gas industry will impact this unique heritage site over the production period of several decades becomes even more important.



III. Strategic Environmental Assessment and Moratorium on current Exploration Phase – UNESCO's and IUCN's Calls

To truly assess the cumulative impacts of ReconAfrica's plans in the Okavango basin, a transboundary Strategic Environmental Assessment is required and must be rapidly conducted. The need for such an assessment is also amplified by the fact that – most likely influenced by the development in Namibia and Botswana – Angola revoked an existing oil and gas drilling ban in the Kavango Basin.²³

In July 2021, UNESCO adopted the following decision during the extended 44th session of the World Heritage Committee²⁴:

"... Expresses concern about the granting of oil exploration licenses in environmentally sensitive areas within the Okavango river basin in northwestern Botswana and northeastern Namibia that could result in potential negative impact on the property in case of spills or pollution;

Urges the States Parties of Botswana and Namibia to ensure that potential further steps to develop the oil project, which include the use of new exploration techniques, are subject to rigorous and critical prior review, including through Environmental Impact Assessment (EIA) that corresponds to international standards, including an assessment of social impacts and a review of potential impacts on the World Heritage property

Requests furthermore the State Party to submit to the World Heritage Centre, by 1 February 2022, an updated report on the state of conservation of the property and the implementation of the above, for examination by the World Heritage Committee at its 45th session."

The urgent need for action to protect the Okavango from oil and gas exploitation was also expressed during the World Congress of the International Union for Conservation of Nature (IUCN) that took place in September 2021 in Marseille. Motion 136²⁵ points to the human and indigenous rights aspects of the case, raises the climate change urgency and refers to UNESCO's request calling on Namibian and Botswana to conduct a proper EIA *"prior to any further exploration and any future development of oil and gas resources and other extractive activities in and/or affecting the Okavango River basin and its people."*

In the February 2022 State of Conservation Report, the Government of Botswana acknowledged the concerns raised by the World Heritage Committee and promised that a *"rigorous and critical Environmental Impact Assessment is a prerequisite to any intrusive development in the area."* Botswana also pledged to monitor prospecting and mining activities within the Okavango River Basin and *„to continue the engagement of Angola and Namibia on the management of the shared waters of the Cubango-Okavango River Basin."*

However, ReconAfrica and Namibia are apparently willing to move forward without a robust transboundary Strategic Environmental Assessment that critically looks at the cumulative impacts. In June 2022, Namibian environmental commissioner Timoteus Mufeti granted an extension to the company's original Environmental Clearance Certificate (ECC), allowing it to start drilling additional multiple wells²⁶. In September 2022 ReconAfrica announced the completion of a third well in



Namibia.²⁷ In October 2022 the company announced an upcoming Environmental Impact Assessment (EIA) for Botswana. To this very day, no EIA has been conducted in Botswana. In November 2022, ReconAfrica applied for an additional ECC for drilling multiple exploration and appraisal wells with supporting infrastructure such as borrow pits, access roads and related services in the Kavango Basin. This doesn't look at all as if a transboundary rigorous and critical Environmental and Human Rights Impact Assessment will actually ever take place prior to any further drilling.

IV. Oil & Gas Extraction Threatens Human Rights – International Institutions

The CEDAW Committee has recognized the disproportionate risks that oil and gas production poses to women and girls, particularly in rural and Indigenous communities, through both its local impacts and its global impacts on climate change. In its concluding observations to Guyana, for example, the Committee noted that rural and indigenous women and girls are disproportionately affected by climate change, oil and gas production, and water pollution.²⁸ It further recognized that extraction of oil and gas and the resulting greenhouse gas emissions could undermine state obligations to women's empowerment and gender equality, as "the resulting environmental degradation and potential natural disasters have a disproportionate impact on women, in particular those in situations of poverty."²⁹ The Committee expressed similar concerns in its Concluding Observations to Norway: "[T]he continuing and expanding extraction of oil and gas ...and its inevitable greenhouse gas emissions undermine [the State Party's] obligations to ensure the substantive equality of women with men, as climate change disproportionately affects women, especially in situations of poverty, since they are more reliant on natural resources for their livelihoods than men and have lesser capacity to deal with natural hazards."³⁰

In its General Recommendation 37, the Committee emphasized the disproportionate impacts of climate change on women and girls, noting that rural and Indigenous women are among those most directly affected by climate change.³¹ The heightened risks that global warming poses to women and girls trigger state obligations under CEDAW to "mitigat[e] the negative human rights impact of climate change" including by "limiting greenhouse gas emissions and the harmful environmental effects of extractive industries."³²

In addition to recognizing the risks that oil and gas production poses to CEDAW-protected rights, generally, the Committee has specifically addressed the threats posed by fracking. In March 2019, the CEDAW Committee urged the British Government to "consider introducing a comprehensive and complete ban on fracking."³³ The recommendation was underlined by the Committee's concerns that "women in rural areas in other territories of the State party are disproportionately affected by the harmful effects of fracking, including exposure to hazardous and toxic chemicals, environmental pollution and the effects of climate change."

Other human rights authorities have issued similar findings and recommendations. In 2018, the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern about the development of shale gas and oil in Argentina, noting the negative local *impacts of fracking on the environment, water, and health, as well as impacts on global warming, and urging the adoption of a regulatory framework that adequately addresses those myriad harms and threats.*



The Permanent Peoples Tribunal on Human Rights, Fracking and Climate Change, has made similar findings regarding the risks fracking poses to human rights, and similarly recommended that fracking should be banned.³⁴

In a 2021 report, the Special Rapporteur on Human Rights and the Environment, David Boyd, notes the harmful effects of fracking on water quality and the health risks associated with exposure to polluted water, and recommends that states “[p]rohibit activities such as fracking . . . that pollute water and exacerbate the climate crisis.”³⁵

In his 2022 A/77/226 report (transmitted to the United Nations General Assembly for its seventy-seventh session) the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, in accordance with Human Rights Council resolution 48/14 concludes (amongst other things the following)³⁶:

- *“restoring ecosystems is crucial for planetary health, it is no substitute for preventing emissions from fossil fuels”*

and recommends (amongst other things) to:

- *“establish an international human rights tribunal to hold accountable Governments, business and financial institutions for their ongoing investments in fossil fuels and carbon intensive industries and the related human rights effects that such investments invoke;*
- *“pass a resolution to ban any further development of fossil fuel mining and other harmful mitigation actions;*
- *Recommend that the International Criminal Court include an indictable offense of ecocide;*
- *Include human rights considerations in their nationally determined contributions and other planning processes and ensure that market-based mechanisms have effective means for protecting human rights and effective compliance and redress mechanisms to this effect*
- *Ensure that food security and the protection of the rights of indigenous peoples take precedent over land-based mitigation actions.*

V. These Risks Are Particularly Acute in Namibia

The risks of human rights impacts by oil and gas extraction are heightened in Namibia (see for example *The Situation of Indigenous San Young Women in Namibia* - produced by the Women Leadership Centre, Namibia, and submitted 15 Feb 2021 to CEDAW)³⁷. The Kavango East and West are the least developed regions of the country, inhabited by some of Namibia’s most marginalized Indigenous Peoples and local communities. There is little doubt that oil and gas development and its significant contribution to global warming poses a significant threat to the rights, well-being and future of affected communities.



The rural areas targeted for oil and gas exploration and development in Namibia, Kavango East and West, are inhabited by Indigenous Peoples (including First Nations San peoples) and local communities. Women and girls in these Nations and communities are already marginalized and suffer from multiple, intersecting forms of discrimination. Oil and gas extraction will only exacerbate these vulnerabilities, through both its local and global impacts. Locally, oil and gas production – particularly through unconventional methods, like fracking – could lead to depletion and contamination of scarce local water sources and other forms of pollution, health hazards, displacement and disruption of local livelihoods and food security, and potential introduction of social conflict and disease, among other potential impacts. Globally, the production of oil and/or gas in Namibia will lead inevitably to increased greenhouse gas emissions from the burning of those fossil fuels, exacerbating climate change which disproportionately harms indigenous and marginalized communities. Given the experience of other rural and Indigenous communities affected by oil and gas extraction (including fracking), for example in the United States, we fear that affected communities in Kavango East and West will suffer similar adverse impacts.

Namibia is one of the most arid countries on the planet with huge swaths of land forming part of the Namib or Kalahari deserts. It enjoys an average rain fall of about 350mm per year, less than half of the world average of 800mm. Much of Namibia’s water resources are based on groundwater aquifers and to a lesser extent on water from the Kavango River. Access to water is therefore a potentially limiting factor to economic growth, food security and socio-economic advancement. Climate change is predicted to affect water security and rain fall in the future.

The Namibian Ministry of Health and Social Services signed an agreement with the Vienna-based International Atomic Energy Agency to assess how climate change is impacting Namibia’s groundwater resources. A moratorium on the further steps of the exploration phase of oil and gas development (including seismic surveys) should be immediately put in place until the results of the project called “Assessing the impact of climate change and variability on groundwater resources in major aquifers in Namibia” have been provided and can be properly assessed.

VI. Conclusion

To effectively prevent and protect against the adverse impacts of oil and gas extraction, including fracking, on -protected rights, particularly rights of rural and Indigenous communities, the government of Namibia should halt oil exploration in the Kavango regions East and West and establish a moratorium on the current oil and gas exploration in the Kavango as well as a complete and comprehensive fracking ban in Namibia. **We therefore strongly encourage the Human Rights Committee to engage with the Namibian Government to address these urgent issues.**

Sincerely
on behalf of

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Sources:

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³² General Recommendation No. 37, at para 14.

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