

## Submission by the United Nations High Commissioner for Refugees

### For the Office of the High Commissioner for Human Rights' Compilation Report

#### Universal Periodic Review:

#### *2nd Cycle, 24th Session*

## NAMIBIA

### I. BACKGROUND INFORMATION

Namibia acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1995. The *1951 Convention* is incorporated into domestic legislation through the *1999 Namibia Refugees (Recognition and Control) Act*.<sup>1</sup> This *Act* also incorporated provisions of the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. Namibia maintains its reservation to Article 26 of the *1951 Convention* and consequently continues to limit the freedom of movement of refugees and asylum-seekers.<sup>2</sup>

Namibia is not party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). However, Namibia is party to the following international and regional human rights instruments that make reference to the right to nationality and the protection of the fundamental rights of stateless persons: the *1966 International Covenant on Civil and Political Rights*; the *1967 International Convention on the Elimination of All Forms of Racial Discrimination*; the *1979 Convention on the Elimination of All Forms of Discrimination Against Women*; the *1989 Convention on the Rights of the Child*; the *1981 African Charter on Human and Peoples' Rights*; the *1990 African Charter on the Rights and Welfare of the Child*; and the *2006 Convention on the Rights of Persons with Disabilities*.

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<sup>1</sup> *Namibia Refugees (Recognition and Control) Act, 1999* [Namibia], 19 March 1999, available at: <http://www.refworld.org/docid/3ae6b59ac.html>.

<sup>2</sup> Article 26 of the *1951 Convention* reads: "Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances." The text of Namibia's reservation reads: "[S]ubject to the following reservation in respect of article 26: The Government of the Republic of Namibia reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement if consideration of national security so required or make it advisable." (Available at: [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&lang=en#EndDec](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en#EndDec)).

Namibia hosted persons in need of international protection even before it attained its independence and continues to do so currently. As of February 2015, Namibia hosted 2,603 refugees and asylum-seekers. In addition, about 1,742 former Angolan refugees were still awaiting documentation with regards to their local integration in Namibia. Nearly all reside in Osire refugee settlement. The main country of origin for refugees in Namibia is the Democratic Republic of the Congo (the DRC) (2,074), followed by Burundi (266) and Rwanda (165). The remaining refugees and asylum-seekers originate from Zimbabwe and other countries. In 2014, at least two persons opted for voluntary repatriation, while 53 persons departed on resettlement to third countries. The UNHCR operation in Namibia received 315 new arrivals in 2014, which is slightly more than its projected figure.

As of June 2015, UNHCR will no longer have a presence in Namibia. However, it is expected that the number of new arrivals will significantly increase in 2015 - 2016. UNHCR is currently focusing on durable solutions, particularly the local integration of former Angolan refugees and the resettlement of those refugees who remain in the camp, including those from the DRC. The Office will continue strengthening the protection environment, with a view to ensuring that the Government assumes full responsibility for protection activities by mid-2015. This will allow UNHCR to phase out its presence, though it will continue supporting the Government, notably in refugee status determination (RSD), food assistance and shelter from its regional office in Pretoria, South Africa.

Namibia has maintained its position of respect for the rule of law and multi-party democracy since its independence in 1990. In line with its vibrant democracy, the country concluded national assembly and presidential elections in November 2014, during which the ruling Swapo party achieved an overwhelming majority win in the national assembly elections. The party's Vice President, Dr. Hage G. Geingob, also scored an overwhelming majority victory in the presidential elections and became the president-elect of the country. International and local election observers declared the elections free and free.

Prior to the elections however, the country experienced a serious challenge to its stability when landless youth formed the Affirmative Repositioning Movement to address access to urban centres and the skyrocketing land prices in the country. The youth were led by Job Amupanda, a prominent youth leader of the Swapo Youth League. Amupanda resigned shortly afterwards before he was suspended.

## **II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS**

Following sustained lobbying from UNHCR, the Namibian Government has agreed to locally integrate 2,400 former Angolan refugees. This decision came after cessation was invoked in June 2012 and after the organized repatriation ended in June 2013.

UNHCR commends the Government for taking this bold step to find durable solutions to a significant number of the refugees in Namibia.

The Government is also to be commended for its efforts to set up a reception centre in the north-eastern border town of Katima Mulilo. UNHCR assisted the Government with the procurement of an office and accommodation facilities for staff and newly-arrived asylum seekers. The main purpose of the centre is to receive and process new arrivals who enter the

country to seek asylum. After being processed, the new arrivals will be sent to the Osire refugee settlement for further refugee status determination formalities.

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### Issue 1: Freedom of movement

Namibia's reservation to Article 26 of the *1951 Convention* concerning freedom of movement remains a significant gap in the legal framework of the country. In practice, this reservation is enforced through the Government's legal directive under Section 19 of the *1999 Namibia Refugees (Recognition and Control) Act*, which provides that all asylum-seekers and refugees are required to reside in Osire refugee settlement. Freedom of movement is a human right which is guaranteed by the *Constitution* of the Republic of Namibia (Article 21(g)).<sup>3</sup> Although freedom of movement is a right that can be derogated from, in terms of the *Constitution*, there does not seem to be adequate justification for Namibia to have this reservation in place and continue limiting this right. The refugee population has reduced significantly to a very manageable number that will not be a threat of any kind to the security, peace or stability of the country. During the 1st cycle UPR, Namibia received a recommendation from Ecuador to withdraw its reservation to Article 26 of the *1951 Convention*.<sup>4</sup> However, Namibia did not support this recommendation.

This restriction on freedom of movement continues to have particularly negative consequences on refugees' enjoyment of their social and economic rights. Osire refugee settlement is located between commercial farms some 245 kilometers from the capital Windhoek. It is also situated about 124 kilometers from the nearest town. Refugees who want to leave the settlement are required to obtain a permit from the Settlement Administrator. When the permit expires and if the refugee fails to return to the settlement, he/she could be arrested and detained.

This isolation has resulted in refugees and asylum-seekers having very limited contact with the local communities. Social interaction is difficult unless they leave the settlement on a permit and go to other towns.

Refugee entrepreneurs in the settlement face difficulties in finding outside markets for their products. Because of their isolation, they are often left to sell their products in the settlement where the available markets may be saturated and returns are quite minimal.

Moreover, UNHCR will close its presence in Namibia by the end of June 2015 and as such, the remaining refugees and persons of concern will have to fend for themselves in most cases in order to survive. As such, it would be better if the reservation is lifted so that refugees and persons of concern can engage in livelihoods activities not only to sustain themselves but also to sustain their families and thus become less of a burden on the Government. Withdrawal of

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<sup>3</sup> See: *Constitution of the Republic of Namibia (amended 1998)* [Namibia], 21 March 1990, available at: <http://www.refworld.org/docid/47175fd361.html>.

<sup>4</sup> "98.17. Review the reservation to article 26 of the Refugee Convention to authorize the free movement and residence of persons with recognized refugee status and to also extend this to asylum seekers (Ecuador);" See: Report of the Working Group of the Universal Periodic Review: Namibia, A/HRC/17/14, 24 March 2011, para. 98.17, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/122/97/PDF/G1112297.pdf?OpenElement>.

the reservation would also allow persons of concern the freedom to meet and integrate with the local population.

### **Recommendations:**

UNHCR recommends that the Government of Namibia:

- Withdraw its reservation to Article 26 of the *1951 Convention relating to the Status of Refugees*; and
- Amend the *1999 Namibia Refugees (Recognition and Control) Act* to allow for freedom of movement for refugees and asylum-seekers.

### **Issue 2: Fair and efficient asylum procedures**

The Government conducts refugee status determination (RSD) for all asylum-seekers, in accordance with the *1999 Namibia Refugees (Recognition and Control) Act*. However the RSD procedure is not fully compliant with international standards and the processing of asylum requests is not done within a reasonable timeframe, which leads to a significant backlog. It currently takes about three months to process an asylum application, which is quite lengthy given the relatively small number of asylum applications. This backlog has the effect of hindering asylum-seekers' access to documentation and indirectly their freedom of movement and opportunities for income generation. There is currently a backlog of roughly 1,100 asylum applications. Challenges remain in addressing this backlog, as Namibia receives more than the estimated 30 persons per month and because of the lack of RSD capacity at the Refugee Desk under the Ministry of Home Affairs and Immigration.

The lack of capacity and sufficient staff resources to conduct and carry out RSD procedures has negatively affected the asylum procedures. In many instances, asylum-seekers have been left in limbo regarding their refugee status. UNHCR has on several occasions intervened by supporting the Refugee Administration Directorate through funding the recruitment of staff, training and operationalizing RSD work.

### **Recommendation:**

UNHCR recommends that the Government of Namibia:

- Improve administrative procedures to ensure high quality refugee status determination, including by recruiting adequate staff and providing sufficient capacity building.

### **Issue 3: Non-refoulement and access to the territory**

The *1999 Namibia Refugees (Recognition and Control) Act* provides for access to territory and respect of the principle of *non-refoulement*. However, in November 2014, there was a worrying incident where an asylum-seeker was not allowed to apply for asylum in Namibia because of his sexual orientation. As a result of his fear of persecution on the basis of his sexual orientation, he had fled to Namibia to seek asylum. However, instead of his claim being heard, he was deported. The asylum-seeker was eventually allowed to return to Namibia after UNHCR intervention and pressure. Although it is not a constant practice, this isolated incident is a cause of serious concern.

**Recommendation:**

UNHCR recommends that the Government of Namibia:

- Respect the principle of *non-refoulement* and allow all asylum-seekers access to asylum procedures.

**Issue 4: Local integration**

In August 2013, the Cabinet of Namibia approved 2,400 former Angolans for local integration and the process is still ongoing. Currently about 1,742 Angolans are still awaiting documentation with regards to their local integration in Namibia.

The former Angolan refugees approved for local integration have been in Namibia for more than 10 years after they fled their country because of the civil war. When the cessation clause for Angolans was invoked in June 2012, some 3,200 Angolan refugees opted to repatriate. After UNHCR intervention, the Namibian Government agreed to locally integrate the remaining 1,742 former refugees in Namibia. Their integration will take the form of permanent residence permits paid for by UNHCR. The permits will be endorsed in passports supplied by the Angolan Government.

While the process of local integration is still continuing, the majority of the former Angolan refugees reside in the Osire refugee settlement where they are also subjected to exit control procedures by the Namibian authorities.

However, Namibia has not considered local integration for refugees of other nationalities. UNHCR is still engaging the Government to review its stance on this issue.

**Recommendations:**

UNHCR recommends that the Government of Namibia:

- Finalize the local integration process of former Angolan refugees; and
- Consider local integration as a durable solution for refugees of other nationalities.

**Issue 5: Civil documentation**

The Namibian authorities have been struggling for many years to issue civil documentation such as ID documents and birth certificates to refugees and asylum-seekers. Over the years, the Ministry of Home Affairs and Immigration has issued 1,800 identity documents to refugees. Roughly 600 identity documents still need to be issued by the authorities. Refugees without identity cards are unable to positively identify themselves and may potentially be exposed to arrest and detention by immigration authorities, amongst other risks. UNHCR is aware of numerous incidents where refugees were arrested and detained by police and immigration officials on suspicion of being irregular immigrants because they did not have identity documents. These persons are only released after UNHCR verifies their identities through the database and intervenes with the authorities. In addition, ID documents that have been issued are not recognized as official Government documentation by many institutions, such as banks. This makes it difficult for refugees and asylum-seekers to access some of these vital services.

Furthermore, in 2012, refugee children were at risk of statelessness in cases where the Ministry of Home Affairs and Immigration failed to issue them birth certificates in a timely manner. It was through the intervention of UNHCR that this situation was rectified and the birth registration rate is currently at 100 per cent.

### **Recommendation:**

UNHCR recommends that the Government of Namibia:

- Respect refugees and asylum-seekers' right to identity documents, including by issuing official birth certificates to new-born children of asylum-seekers and refugees.

### **Issue 6: Prevention of statelessness and protection of stateless persons**

In Namibia, the legal framework on nationality is governed by the *Constitution* (Article 4) and the *1990 Act to further Regulate the Acquisition or Loss of Namibian Citizenship*.<sup>5</sup> The citizenship law contains some safeguards against statelessness, for instance by ensuring equality between men and women in their right to transmit nationality to their children and spouses. The *Constitution* also includes some safeguards for acquisition of nationality for children born in Namibia who would otherwise be stateless.

However, as also noted by the Committee on the Right of the Child in its Concluding Observations of 16 October 2012 (61st session),<sup>6</sup> the legislative framework on nationality is silent on the issue of granting nationality to children who are found in Namibia but whose parents are unknown.

As further noted by the Special Rapporteur on Extreme Poverty and Human Rights,<sup>7</sup> this particularly affects the status of orphan children born in Namibia to parents of Angolan origin. Many of these children are not registered at birth and have no proof of parentage and therefore are at risk of statelessness as they cannot demonstrate that they are or have acquired Namibian, Angolan or another nationality.

Additionally, provisions on renunciation of Namibian nationality and on loss of nationality acquired by registration or naturalization do not include adequate safeguards against statelessness. In particular Article 4(8)(c) of the *Constitution* and Article 7(3)(a) of the *1990 Citizenship Act* provide for loss of citizenship on the ground of stay abroad for a period exceeding two years for individuals who are Namibian nationals by registration or naturalization and who do not meet the conditions listed in Article 7(3)(a), even if the person would become stateless. This provision also has consequences for children's enjoyment of the right to a nationality as Article 7(3)(b) foresees that children of individuals who lost their Namibian nationality on grounds of stay abroad, who are not or have not been married and who are Namibian citizens by registration or naturalization shall also cease to be Namibian citizens if the other parent of such children is not, or does not, remain a Namibian citizen.

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<sup>5</sup> *Act to Further Regulate the Acquisition or Loss of Namibian Citizenship* [Namibia], 30 August 1990, available at: <http://www.refworld.org/docid/3ae6b4f84.html>.

<sup>6</sup> Paragraph 36 (d) of the Concluding observations on the consolidated second and third periodic reports of Namibia, adopted by the Committee at its sixty-first session (17 September – 5 October 2012), CRC/C/NAM/CO/2-3.

<sup>7</sup> Paragraph 39, *Report of the Special Rapporteur on Extreme Poverty and Human Rights: Mission to Namibia*, 17 May 2013, A/HRC/23/36/Add.1.

Furthermore, in early 2015, Namibia experienced challenges relating to the issue of statelessness when politicians raised a possibility that descendants of Ovaherero persons who have been in Botswana for more than 100 years are at risk of being rendered stateless if the *Namibian Citizenship Special Conferment Bill* is passed in Parliament. The relevant provisions that are contentious are included in Section 2 of the *Bill*, which deals with the conferment of Namibian citizenship upon certain persons. The *Bill* was already discussed in the National Assembly and is currently before the National Council, which is the second house of Parliament.

The *1961 Convention on the Reduction of Statelessness* establishes a range of standards to prevent statelessness at birth and later in life. The *1954 Convention relating to the Status of Stateless Persons* is the primary international instrument that aims to regulate and improve the status of stateless persons and to ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination. As pointed out above, there is a real potential risk of statelessness for certain persons in the Namibian context. In line with recommendations made by the Special Rapporteur on Extreme Poverty and Human Rights<sup>8</sup> in 2013, as well as in the context of the 1st cycle UPR of Namibia in 2011<sup>9</sup> and of the periodic review by the Committee on the Right of the Child<sup>10</sup> it is therefore crucial that the Government accedes to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* and ensures that adequate safeguards are in place in the domestic legislation against statelessness and for the protection of stateless persons.

### **Recommendations:**

UNHCR recommends that the Government of Namibia:

- Consider accession to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*; and
- Revise the *1990 Act to further Regulate the Acquisition or Loss of Namibian Citizenship* to bring it further in line with international standards on the prevention and reduction of statelessness.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
June 2015**

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<sup>8</sup> Paragraph 91(e), *Report of the Special Rapporteur on Extreme Poverty and Human Rights* in Namibia during the twenty-third session of 17 May 2013, A/HRC/23/36/Add.1.

<sup>9</sup> Recommendation 98.18, “Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Slovakia),” Report of the Working Group on the Universal Periodic Review Namibia, 24 March 2011, A/HRC/17/14. [This recommendation was not supported by Namibia].

<sup>10</sup> Paragraph 37(e) the Concluding observations on the consolidated second and third periodic reports of Namibia, adopted by the Committee at its sixty-first session (17 September–5 October 2012), CRC/C/NAM/CO/2-3.

**Excerpts of Recommendations from the 1st cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedure mandate holders**

**- Universal Periodic Review:**

**NAMIBIA**

We would like to bring your attention to the following excerpts from the 1st cycle Universal Periodic Review Reports, UN Treaty Monitoring Bodies' Concluding Observations and Recommendations from UN Special Procedures Mandate Holders' Reports relating to issues of interest and persons of concern to UNHCR with regards to Namibia.

**I. Universal Periodic Review**

Below is a list of recommendations of relevance to UNHCR made to Namibia during the 1st cycle of the Universal Periodic Review. These are divided into three sections: recommendations that enjoyed the support of Namibia; recommendations rejected by Namibia; and recommendations which were under the consideration of Namibia. Namibia's views and responses to recommendations are elaborated upon (and sometimes amended) in the Addendum.<sup>11</sup> Relevant information contained in the Addendum can be found here in italics.

**Report of the Working Group on the Universal Periodic Review, 24 March 2011 (Seventeenth Session) [A/HRC/17/14](#)**

**96. The following recommendations formulated during the interactive dialogue/listed below enjoy the support of Namibia:**

96.22. Make more efforts to, pass additional legislation and carry out awareness-raising and counselling to eliminate the consequences of racial discrimination in all its forms (Sudan);

96.23. Continue its efforts in combating racial segregation and discrimination in various fields, particularly in education and continue the adoption of special measures in the context of the Durban Declaration and Programme of Action (Palestine);

96.3. Adopt appropriate legislation on trafficking in human beings, prohibit the use, procuring or offering of children for prostitution and ensure that children under the age of 14 are not engaged in child labour (Slovenia);

96.4. Intensify its efforts regarding the process of enacting legislation on human trafficking (Azerbaijan);

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<sup>11</sup> *Addendum (31 May 2011) A/HRC/17/14/Add.1*



96.5. Accelerate the passage and implementation of anti-trafficking legislation and, in the interim, use current laws, like the Prevention of Organized Crime Act (POCA), to prosecute sex and labour trafficking offences and adequately punish trafficking offenders (United States of America);

96.15. Remain steadfast in pursuing its exemplary policies towards gender equality, particularly by strengthening measures to eradicate gender-based violence (Lesotho);

96.35. Promote a policy of equality and non-discrimination and that Namibia step up its efforts to reduce poverty with economic and social measures which ensure equal opportunity to citizens in the social, economic and political life of the country (Spain);

96.36. More efforts be made to combat gender violence, principally through the adoption of political measures to include the representation of women in decision-making-posts and in public administration (Spain);

96.41. Prioritize the elimination of discrimination and violence against women (Norway);

96.42. Apply fully the legislation geared towards combating discrimination and violence, particularly sexual, against women and young girls, particularly in terms of access of victims to justice and of training of magistrates, judges and police regarding this problem (France);

96.43. Move forward quickly with a national action plan to combat gender-based violence, including human trafficking (United States of America);

96.44. Implement standard procedures to identify victims and provide them with protection, conduct national anti-trafficking public awareness campaigns, and incorporate anti-human trafficking training into its police training curriculum (United States of America).

**97. The following recommendations enjoy the support of Namibia which considers that they have already been implemented or are in the process of implementation:**

97.10. Allocate the resources necessary for the full implementation of the “Zero Tolerance Campaign against Gender Based Violence, Including Human Trafficking,” and ensure engagement at the highest political level in the campaign to highlight the unacceptability of violence against women and address the attitudes and stereotypes that perpetuate discriminatory practices that are harmful and violent toward women (Canada).

**98. The following recommendations will be examined by Namibia which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011:**

98.17. Review the reservation to article 26 of the Refugee Convention to authorize the free movement and residence of persons with recognized refugee status and to also extend this to asylum seekers (Ecuador);

### 23. Rejected

*The Namibian Government took note of the concerns expressed by Member States towards migrants, refugees and asylum seekers, but as a country we reject the recommendation. In terms of the Vienna Convention on the Law of Treaties of 1969, reservations are allowed. The Namibian Government has made reservations to Article 26 of the 1951 UN Convention in terms of section 19 of the Namibia Refugees Recognition and Control Act of 1999 to regulate the movement of refugees and asylum seekers. The Government allows refugees to leave the refugees settlement for up to 14 days or more depending on the reasons given by whoever wishes to visit a specific place whether inside the country or outside the country. Their movements are regulated via the office of the Camp administrator situated within the Osire Refugees Settlement. This is mainly done to safe guard their wellbeing and protection while they are away from the Settlement. There are private minibuses which make their way to the Osire Refugees Settlement to take refugees to and from the nearby town of Otjiwarongo on a daily basis for shopping and other activities.*

98.18. Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Slovakia).

*Noted*

### 99. The following recommendations below did not enjoy the support of Namibia:

99.3. Legislative measures be adopted to decriminalize consensual sexual relations between adults of the same sex including a provision on the prohibition of discrimination on the basis of sexual orientation or on gender identity (Spain).

## II. Treaty Bodies

### Committee on the Rights of the Child

Concluding Observations, Sixty-first session (16 October 2012) [CRC/C/NAM/CO/2-3](#)

#### **Independent monitoring**

20. The Committee is concerned about the lack of a children's rights division within the Office of the Ombudsman that is accessible to all children. The Committee is also concerned that only limited staff and resources have been provided to the Office of the Ombudsman and that the staff have not received any specific training on children's rights, which severely constrains the capacity of the office to monitor and respond to violations, as reflected by the small number of children's complaints before this mechanism.

**21. Drawing attention to its general comment No. 2 (CRC/GC/2002/2, 2002), the Committee calls upon the State party to establish a children's rights division in the Office of the Ombudsman that would be responsible for monitoring children's rights violations and addressing children's complaints in a**

**child-sensitive manner. The Committee also urges the State party to ensure that this mechanism is provided with the necessary human, technical and financial resources to ensure its independence and efficacy. In this regard, the Committee encourages the State party to seek technical assistance from, inter alia, the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Office of the United Nations High Commissioner for Human Rights.**

### **Non-discrimination**

30. The Committee notes the efforts by the State party to address discrimination, including through the formulation of numerous policies and programs, such as the Education Sector Policy for Orphans and Vulnerable Children and the National Policy on HIV/AIDS for the Education Sector. Despite these efforts, the Committee is concerned about:

- (a) Human rights violations resulting from widespread discrimination against children from indigenous communities, in particular Ovahimba and San, children with disabilities, those living in poverty, children in street situations and refugee and migrant children;
- (b) Pervasive marginalization and discrimination against women and girls, including patriarchal attitudes and deep-rooted norms and customs that discriminate against girls and place severe restrictions on their human rights. Furthermore, the Committee is concerned about the customary laws and practices that discriminate against women and girls, including those relating to marriage and inheritance.

**31. In the light of article 2 of the Convention, the Committee recommends that the State party:**

- (a) Intensify measures, including timely implementation of relevant policies and strategic plans, to reduce poverty, prevent and combat discrimination in education, health and development, particularly for girls, indigenous children, children with disabilities and other groups of children in vulnerable situations;**
- (b) Adopt all necessary measures to combat discrimination faced by women and girls under customary law, particularly in the areas of marriage and inheritance rights, including through efforts to prevent the application of such law in rural areas. In these efforts, the Committee calls upon the State party to ensure that girls, women, traditional leaders and civil society organizations are consulted throughout the process;**
- (c) Review all relevant civil laws to end legislative discrimination against women and girls. In particular, the State party should review the Married Persons Equality Act of 1996 to eliminate all discriminatory provisions, including those affecting marriage, land ownership and inheritance rights;** (d) **Include detailed information in its next report on measures adopted to prevent the application of customary law that discriminates against girls and women or has the effect of creating or perpetuating discrimination against girls.**

### **Birth registration**

36. The Committee welcomes the State party's progress in ensuring that all children are registered at birth, including through the national mobile registration campaign in 2009 and 2010. However, the Committee is concerned that:

- (a) Only two thirds of children under the age of 5 have a birth certificate and that birth registration is particularly low in rural areas, especially in Caprivi and Kavango regions and among children living in poverty;
- (b) The legal framework for birth registration is restrictive, including the requirement to present civic documentation, which creates serious obstacles for parents without such documents to register the births of their children;
- (c) Refugees face serious challenges in registering the birth of their children, as officials are reluctant to issue birth certificates to foreign children born in Namibia. Furthermore, the legal directive which requires refugees and asylum seekers to reside in the isolated Osire refugee settlement restricts their freedom of movement to register the births of their children;
- (d) The State party's legislation on nationality is silent on the issue of granting nationality to children who are found in Namibia but whose parents are unknown.

**37. The Committee strongly urges the State party:**

- (a) To strengthen its efforts to ensure immediate and universal birth registration, including through reforms in the Birth, Marriages and Death Registration Act of 1963, and, in the meantime, take immediate special measures to register the births of all children and provide all children with free birth certificates without any discrimination;**
- (b) To intensify public awareness campaigns on the importance of birth registration;**
- (c) To establish effective procedures to identify unaccompanied and separated asylum-seeking and refugee children and immediately take special measures to register their births;**
- (d) To withdraw its reservation to article 26 of the 1951 Convention relating to the Status of Refugees, and allow freedom of movement for the refugees and asylum seekers;**
- (e) To accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

**Adoption**

49. The Committee is deeply concerned that domestic and inter country adoptions take place unofficially through unauthorized private channels, and without any oversight by the State party. The Committee also notes with concern the absence of national legislation on intercountry adoptions. The Committee is concerned that in the absence of a legal framework and a specific body to monitor domestic and intercountry adoption, children are exposed to exploitation and child trafficking.

**50. The Committee recommends that the State party:**

- (a) Urgently adopt a comprehensive law on domestic and intercountry adoption and ensure that it is in full compliance with the Convention and other international standards. In the meantime, the State party should take immediate measures to stop unofficial adoptions in order to prevent abusive practices, including the exploitation and trafficking of children;**

**(b) Entrust the responsibility of monitoring and collecting data on domestic and intercountry adoption, including post-adoption monitoring, to a specific body, and ensure that the principle of the best interests of the child is always taken into consideration;**

**(c) Expedite the ratification of the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.**

#### **Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**

63. The Committee welcomes that the State party has allocated substantial resources to the education sector. The Committee also welcomes the Education and Training Sector Improvement Programme for inclusive education. However, it is concerned about:

(a) The disparities between urban and rural areas in terms of access to education, the insufficient number of well-trained teaching staff, and poor school infrastructure and children's limited access to school materials and textbooks;

(b) The low retention and high drop-out rates in primary and secondary schools;

(c) The private costs, including the contribution to the school development funds and its impact on children's right to education, particularly of certain groups of children, such as children living in poverty, pregnant adolescents, children with disabilities, migrant, refugee and indigenous children.

(d) The high level of dropout among girls due to teenage pregnancies and lack of implementation of the policy on the prevention and management of learner pregnancy.

**64. Taking into account its general comment No. 1 (CRC/GC/2001/1, 2001), the Committee recommends that the State party continue to strengthen programmes and policies to ensure the accessibility of quality education for all children in Namibia. In particular, the Committee urges the State party:**

**(a) To increase the number of well-trained teachers, improve school infrastructure, and increase children's access to school materials and textbooks with the view to eradicating regional disparities with regard to school enrolment and attendance;**

**(b) To strengthen support to improve school attendance and retention programmes, and provide vocational training for drop-out students;**

**(c) To eliminate all types of hidden or additional fees in the school system, including an immediate abolishment of the school development fund scheme, to ensure unhindered and equal access to education for all children;**

**(d) To implement special education programmes, taking into account the needs of vulnerable children, and to ensure the effective enforcement of the Policy for the Prevention and Management of Learner Pregnancy to ensure that pregnant girls have full and easy access to education.**

#### **Sale, trafficking and abduction**

71. The Committee is deeply concerned that children are trafficked within the State party for employment in agriculture, road construction, vending and commercial sex work, and that children from other countries are trafficked to the State party for livestock and child-minding work. The Committee also notes with concern the absence of specific legislation on human trafficking and the lack of prosecutions for trafficking in persons.

72. **The Committee urges the State party:**

**(a) To urgently adopt legislation on human trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and article 35 of the Convention on the Rights of the Child;**

**(b) To strengthen its efforts to combat international and internal child trafficking, including by establishing more rigorous border control;**

**(c) To ensure that adequate measures are taken to hold perpetrators of child sale, trafficking and abduction accountable for their offences.**

### **III. Special Procedures**

#### **Report of the Special Rapporteur on Extreme Poverty and Human Rights in Namibia, twenty-third session (17 May 2013) [A/HRC/23/36/Add.1](#)**

26. The socio-economic inequality of women and girls and some negative cultural practices are at the root of widespread gender-based violence in Namibia, which is a grave and persisting human rights concern. Poverty is both a contributing factor to, and a result of, gender-based violence. Women's lower economic status and lack of economic autonomy create relationships of dependence and increase their vulnerability to abusive relationships, poverty, social exclusion and disempowerment.

27. While Namibia has put in place a strong legal framework to address the various forms of gender-based violence and sexual exploitation, ineffective implementation prevents Namibian women from enjoying their rights to life, security of person, and bodily integrity. Studies indicate that many female victims of violence experience continuing problems when turning to the police, including unsympathetic police attitudes, slow response times, failure to follow up on complaints, and inadequate investigations.

28. There are currently 15 Women and Child Protection Units, intended as specialized police units, which can provide sensitive responses to gender-based violence. However, these units suffer from training shortcomings, frequent transfer of personnel, lack of adequate transport, lack of support and supervision for staff, staff shortages and lack of adequate facilities and equipment. There are currently only a few temporary shelters and places of safety in the country and risk assessments are not undertaken at an early stage. The implementation of the Combating of Domestic Violence Act 2003 has also encountered administrative difficulties. Significant problems have been identified with the processes of application for and serving of Protection Orders as well as compliance with their provisions.

37. Every child has the right to a legal identity, as laid out in the Convention on the Rights of the Child and stated in the Namibian Constitution. Without a birth certificate, children

encounter difficulties in enrolling in school, receiving health care or child welfare grants. To ensure that children enjoy their rights, it is vital to register children at birth. In 2007 only around two-thirds of children had their births registered, with the poorest children almost half as likely to have been registered compared with children from the richest quintile.

38. The Special Rapporteur welcomes recent progress made by the Government towards ensuring universalization of birth registration. However, further efforts are needed to ensure that the poorest children, including those living in the most isolated areas, are registered. Furthermore, the Birth Marriage and Death Registration Act of 1963, which regulates birth registration, is outdated and inadequate. It should be modified as a matter of priority with the aim of facilitating the registration of children.

39. The Special Rapporteur is particularly concerned with the status of orphan children born in Namibia to parents of Angolan origin. Many of these children are not registered at birth and have no proof of parentage and therefore are at risk of statelessness as they cannot demonstrate that they are Namibian or have acquired Angolan or another nationality by descent. These children are unable to receive any benefits or access public services. She notes that the 1961 Convention on the Reduction of Statelessness establishes a range of standards to prevent statelessness at birth and later in life; thus it is of central importance to full enjoyment of every child's right to acquire a nationality under the Convention on the Rights of the Child.

40. The Special Rapporteur welcomes the progress made in the drafting of the Child Care and Protection Bill and the extensive public consultation process undertaken. The Bill will provide mechanisms for the care and protection of Namibian children which are sorely lacking today, such as the recognition of kinship care and child-headed households, the regulation of alternative care, and protection of children against trafficking abuse and exploitation. Nonetheless, she regrets that the Bill has yet to be adopted. The enacting of this long-awaited Bill will be a crucial step towards securing children's rights in Namibia.

## **Conclusions and Recommendations**

**91. The report includes recommendations in each of its sections, but the Special Rapporteur would like to especially urge Namibia to take the following steps to improve the enjoyment of rights by the poorest sectors of society:**

### **Legal and institutional framework**

**(c) Revise the Birth, Marriage and Death Registration Act of 1963 in line with human rights obligations;**

### **Women**

**(a) Take all appropriate measures to eliminate prejudices and negative practices that undermine women's enjoyment of rights in line with the obligations assumed by Namibia under the Convention on the Elimination of Discrimination against Women;**

**(b) Review, analyse and modify policies and programmes on poverty reduction to ensure that gender concerns are taken into account in effective ways;**

**(c) Ensure that women have access to land and productive resources; ensure the effective implementation of the Communal Land Reform Act 2002, particularly in rural areas.**

**(d) Ensure that women have access to appropriate health care services related to pregnancy, particularly in rural areas, granting free services where necessary, and provide quality family planning services that include counselling and advice, focusing on young and poor populations;**

**(e) Ensure that well-equipped Women and Child Protection Units are available throughout the country; invest in police training and increase public awareness with regard to the negative impact of gender-based violence; improve access for victims of gender-based violence, particularly those living in rural areas, to justice, counselling and shelter;**

**(f) Simplify the legal and administrative process for protection orders under the Domestic Violence Act;**

**(g) Take a strong public stand against the practice of forced sterilization of women with HIV/AIDS and establish a mechanism to assess the extent of the practice, taking concrete measures to actively prevent and protect women against it.**

#### **Children**

**(a) Ensure the effective implementation of the National Agenda for Children, which calls for an integrated response to vulnerable children, encompassing issues of child protection and social protection;**

**(b) Improve governance, resource allocation and monitoring mechanisms for effective implementation of child protection services;**

**(c) Take immediate steps to reduce newborn and under-five mortality, including building capacity of health workers to provide quality maternal and newborn health care, equipping health facilities with the necessary medicines and equipment, improving community transportation to health facilities, particularly in rural and remote areas, and improving referral systems and community-based services.**

**(d) Ensure immediate and universal birth registration of all children without discrimination of any kind; ensure that the lack of a birth certificate is not an impediment for children accessing basic public services such as education, health and social protection;**

**(e) Ensure that every child under its jurisdiction enjoys the right to acquire a nationality; accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**

**(f) Establish a children's rights division in the Office of the Ombudsman, to be responsible for monitoring children's rights violations.**