



## STATE PARTY EXAMINATION OF NAMIBIA'S SECOND AND THIRD PERIODICS REPORT

61<sup>ST</sup> SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD  
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*Namibia ratified the Convention on the Rights of the Child (CRC) on 30 September 1990. On 20 September 2012, the Committee on the Rights of the Child (the Committee) examined the second and third periodic report of Namibia. It was last examined on 13 January 1994.*

### Opening Comments

The delegation of Namibia was led by Hon. Doreen Sioka, Minister of Gender Equality and Child Welfare. She was supported by representatives from the Ministry of Gender Equality and Child Welfare, the Ministry of Justice and three representatives from The Permanent Mission of Namibia to the UN at Geneva.

Ms Sioka gave a brief demographic background of the State party explaining that approximately 60 per cent of the Namibian population was under the age of 25 and nearly 40 per cent was under 15 years of age. She stated that the Namibian Constitution recognised children's rights and provided a framework for their wellbeing.

Elaborating on the preparation of the report, Ms Sioka explained the collaboration with line ministries as well as the contributions solicited from the private sector, NGOs and civil society, including children. She particularly thanked UNICEF for its contributions to the process.

Turning specifically to legislation, the head of delegation outlined new acts that had been adopted within the State party including The Combating of Rape Act No. 8 of 2000, the Combating of Domestic Violence Act No. 4 of 2003, the National Disability Act of 2004 and the Labour Act No. 11 of 2007. She explained that the Education Act No. 16 of 2001 prohibited any teacher or member of staff from administering corporal punishment and the

Children Status Act, No. 6 of 2006 provided custody and guardianship for those children born outside marriage. Recognising that the Children's Act, No. 33 of 1960 was outdated in many respects, the head of delegation explained that it was currently under review with particular focus on the issue of inter-country adoption.

Ms Sioka expanded on the new Draft Child Care and Protection Bill and elaborated on new measures to increase child participation such as the Child Parliament, Junior Town Councils and Model United Nations. Further policy developments were detailed such as the Early Childhood Protection and Development Policy and the Education and Training Sector Improvement Programme (ETSIP).

The head of delegation explained that access to education had improved over the last five years and that as of January 2013 free primary education would be rolled out in phases within three years. She detailed the government's Education for All National Plan of Action 2002-2015 which aimed to ensure full and compulsory primary education for all children, with a particular focus on girls and marginalised groups. The launch of the National Policy on Orphans and Vulnerable Children (OVC) and the National Agenda for Children (2012-2016) were other examples of recent developments. Ms Sioka highlighted the fact that Namibia is one of the few countries in Africa to provide social grants to orphans and vulnerable children on a monthly basis.

The head of delegation recognised some of the challenges faced by the State party including high rates of HIV/AIDS and poverty. Further problems had arisen from the lack of civil documentation. Ms Sioka stated that the Birth, Marriages and Death Act of 1963 was currently under review in order to align it with international standards. She explained that the State party was faced with limited human and financial resources and requested technical support from the Committee.

Mr Awich Pollar and Ms Hiranthi Wijemanne served as Country Rapporteurs. Mr Pollar thanked the delegation and welcomed the State Report as self-critical and user-friendly. The Rapporteur expressed concerns about the delayed submission of the second and third report as well as the State party's reservations to the 1951 Convention Relating to the Status of Refugees.

## **General Measures of Implementation**

### ***Legislation***

The Committee commended the State for enshrining the rights of the child in Article 15 of the Namibian Constitution and asked how the law was enforced by the courts.

### ***Ratification of international instruments***

The Committee welcomed the State party's ratification of several international instruments including the Optional Protocol to the Convention Against Torture (OPCAT) but asked why the rejection of the UPR recommendation to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention on Migrant Workers) had been rejected. The Committee noted that the State was not party to the Hague Conventions and asked if it planned to ratify The Hague Convention on the Protection of Children and Co-operation in Respect to Inter-Country Adoption (Hague Adoption Convention).

The delegation stated that since the UPR recommendation, the government had given directives to conduct thorough research about how to align domestic law with the Convention on Migrant Workers. It was explained that although ratification would not happen immediately, the research had shown that domestic law largely covered the same provisions and afforded the same rights. Regarding the State's reservation under article 26 of the 1951 Refugee Convention, the delegation explained that the State party did not place refugees in 'camps', but rather in 'settlements', where they had school access up to university level and could work if they obtained the required permit.

### ***Customary law***

The Committee commented on the use of different legal systems in the State party and asked which law took precedent when customary law conflicted with the formal court decision. The delegation confirmed that the State recognised both formal and customary authority. It was explained that customary courts did not hear criminal cases, only civil matters, whilst formal courts dealt with criminal proceedings. The Maintenance Act 2003 would further clarify these distinctions although it had not yet been implemented.

### ***Independent monitor***

The Committee asked if there was an independent human rights monitoring body in the State party and whether it could receive complaints from children

### ***Coordination and monitoring***

The Committee asked about coordination efforts between the different ministries to ensure a coherent and comprehensive approach to dealing with child rights issues.

### ***Dissemination***

Regarding dissemination, the Committee asked if the CRC had been translated into any local languages. The Committee noted that Namibia was the second least densely populated country in the world and enquired about attempts to inform *all* children about their rights. The delegation replied that the CRC had not been translated into any local language but stressed that children were still made aware of their rights. Efforts such as the Day of the African Child, celebrated each year on 16 June helped stimulate debate in the public arena. It was noted that the theme this year, 'children with disabilities', had proved successful in terms of awareness-raising. The delegation stated that CRC promotion also occurred at school level.

### ***Allocation of resources***

Noting that around 40 per cent of resources were allocated to social affairs and education, a much higher percentage than regional counterparts, the Committee expressed concern about the unequal distribution of such resources and possible corruption.

### ***Budget***

The Committee asked if there was a child-specific budget. The delegation stated that over 22 per cent of the national budget went to education. The majority of this allocation was spent on salaries leaving low coverage for new initiatives and programmes. The delegation explained that there were national standards and performance indicators in schools which assessed the curriculum and its implementation as well as monitoring of policy and resources at school level.

### ***Data collection***

The Committee stressed the need for a comprehensive national data collection system. The delegation explained that the central management of data collection operated from the Office of the Prime Minister. It was stated that most ministries were lacking capacity in this area and the need for increased efforts was required to ensure that improved data systems developed within all governmental bodies.

### **Definition of the Child**

The Committee expressed concern about discrepancies within the law regarding the definition of the child. Differences were noted with regard to criminal age of responsibility, sexual consent, working age, marital age and age of majority. The delegation explained that several definitions were recognised but legally a child was anyone under the age of 18. The age of majority was noted as 21.

It was stated that the Childcare and Protection Bill, which had been drafted in 1994 but never passed, was now being worked on again and would address the age of majority issue. The Married Persons Equality Act 1996 provided the legal age of marriage as 18 years; however, this only pertained to civil marriage. Marriage under customary law was described as permissible when the girl child had reached puberty. The Committee expressed concern about the lack of legal protection for girls under 18 who were forced to marry. The delegation detailed the drafting of a new law on customary law marriage, a lengthy process as it had to reflect the perspectives of all communities.

### **General Principles**

#### ***Non-discrimination***

The Committee expressed concern about discrimination, particularly towards girls, which was reportedly deep-rooted in the patriarchal society. The Committee asked what measures had been taken to confront these issues, including gender-based violence against young girls. The delegation explained that the National Plan of Action on Gender-Based Violence, finalised in 2012, provided a new inter-ministerial initiative emphasising sensitisation training, on all issues related to discrimination on the basis of gender. Community support groups and shelters for victims of abuse had also been established.

#### ***Best interest of the child***

The Committee asked which policies specifically referred to the best interest of the child and whether a monitoring process had been implemented to evaluate their achievements.

#### ***Right to life, survival and development***

The Committee noted that there were high youth suicide rates in Namibia. The delegation detailed the system of regional school counsellors including programmes and training for personnel at school level on how to support children dealing with issues such as bereavement and bullying. The instigation of full time 'life skills' teachers who offered psychosocial support in areas of mental health was also mentioned.

#### ***Respect for the views of the child***

The Committee expressed concern about traditional values prevalent in some communities which disregarded the views of the child. It enquired about awareness raising campaigns that would address such perspectives.

The Committee asked whether children could be heard in judicial proceedings. The delegation replied that the Criminal Procedure Amendment Act (No. 24 of 2003) stipulated that children should be protected as witnesses and as such, afforded special provisions. It was explained that in practice this had been established primarily as a pilot project but the government was attempting to make measures more sustainable for the long-term.

## **Civil Rights and Freedoms**

### ***Birth Registration***

The Committee commended the State's efforts to universalise birth registration in Namibia but regretted that registration rates remained low. It was noted that the Birth, Marriages and Deaths Registration Act 1963 was outdated and did not address abandoned children, migrant children or children living in remote rural areas. The Committee asked whether a child with a Namibian mother and foreign father could assume Namibian citizenship.

The delegation replied that civil registration was a requirement from birth and that all children must be registered. The procedure had become increasingly accessible and was available in hospitals as well as civil affairs offices. It was explained that citizenship was not obtained automatically upon receipt of a birth certificate but instead required a separate application procedure. The Ministry of Home Affairs and Immigration was the responsible body for issues regarding citizenship. In cases of one foreign parent, the parents could decide which nationality should be given to the child; however, this did not guarantee citizenship for the foreign spouse. Citizenship of children born in Namibia to a foreign parent was further complicated in isolated rural areas close to State borders as determining the child's birth place had proved challenging. The delegation confirmed that the system was out-dated and that a review was underway. The Committee expressed concern that citizenship issues for the child were predominantly determined by parental status.

### ***Corporal Punishment***

The Committee recognised that despite the prohibition of corporal punishment in most settings, such practices continued especially in the home and alternative care settings. The delegation stated that whilst the Constitution was silent on corporal punishment specifically, article eight provided that 'no persons shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Corporal punishment had been deemed illegal following a Supreme Court ruling in 1991 but this decision had not outlawed its practice in the home.

The Combating of Domestic Violence Act 2003 covered acts of violence in the home. The delegation stated that as the Constitution was Supreme Law it had been translated into local languages so that everyone understood that this type of violence was unlawful. The Education Act 2001 banned the administration of corporal punishment in schools but the delegation recognised that its practice continued in some institutions. To target this, the Ministry of Education had distributed a booklet and run training sessions about positive forms of discipline. Further measures included videos reiterating the illegality of corporal punishment issued by the Legal Assistance Centre (LAC), as well as targeted television campaigns.

### ***Protection of privacy***

The Committee asked what measures were in place to ensure that the child's right to privacy was protected in family life, alternative care settings and other institutions.

### ***Protection from sexual abuse***

The Committee expressed concern about sexual abuse in the State party. The delegation responded that the Minister of Health shared these concerns regarding the prevalence of young perpetrators as well as abuse perpetrated by older men or 'sugar daddies'. It was explained that a new law would specifically tackle this issue but that the current strategy remained 'in-house'.

## **Family Environment and Alternative Care**

### ***Social workers***

The Committee asked about the capacity of social workers in general. The delegation stated that there was a lack of human resources in that area, which had proved challenging for implementation of law and policy.

### ***Adoption***

The Committee asked which body was responsible for overseeing adoption procedures. The delegation cited the Ministry of Gender Equality and Child Welfare, adding that there was an adoption register within the Ministry. It was noted that the national adoption register, the 'Family Register', had been expanded considerably and now contained adoption records and details of foster families. The delegation clarified that both open and closed adoptions were regulated through the Children's Act 1960, although inter-country adoptions were not covered under this Act.

All adoption procedures had to go through the Magistrate's Office for approval. It was explained that adoptions were not common within the State party and very few cases were extra-familial. Closed adoptions between strangers were monitored by the Ministry of Gender Equality and Child Welfare but social workers could conduct adoption procedures privately. The Committee expressed concern about the lack of safeguards ensuring that social workers involved in private adoptions did not engage in the sale or trafficking of children. The delegation replied that every available measure was taken to ensure the best interest of the child but that without ratification of the Hague Adoption Convention this proved challenging.

### ***Illicit transfer and non-return***

The Committee asked whether there were any bilateral agreements or other such mechanisms in place to stop children from being removed illegally from the State. The delegation said that the Children's Act 1960, although outdated, provided for the return of children to their home country. It was explained that a parent could not leave the country with a child without a court order and any cases of a child leaving the State were recorded.

## **Basic Health and Welfare**

### ***Infant mortality***

The Committee expressed concern about high infant and neonatal mortality rates. It was suggested that this was largely due to poor access to health services in remote areas. The delegation explained that the 2010 Roadmap for Maternal Health was ongoing and the Prime Minister had signed 'A Promise Renewed: Child Survival' in June 2012. The overall restructuring of the health system was underway supported by USAID and UNICEF and this would include strengthened efforts to improve nutritional development. One such initiative had been coordinated by the Namibian Alliance for Improved Nutrition (NAFIN) whose report was due by the end of 2012. It was also noted that abandonment of a child was illegal and the mother would be subjected to the rule of law.

### ***Social welfare and protection***

The Committee recognised that 36 per cent of children did not reside with their parents and asked what kind of social welfare was accessible for these families. The delegation detailed the available maintenance grants for one-parent households as well as for those families in otherwise determined difficult circumstances. The Basic Income Grant system piloted in the State party had proved controversial and the delegation stated that more discussion on the issue was needed. The drought relief programme was confirmed as active, providing support to those persons in need. The Fourth National Development Plan had recommended a social protection assessment to tackle poverty and this had already begun. There was also a system in place for child-headed households. They were assisted through assigned foster carers, family members or social workers and financially supported through a social grant. At local levels there were community-based structures to provide support networks for these families.

### ***Children with disabilities***

The Committee commended the State party for the National Disability Act of 2004 and asked what measures had been put in place to ensure the rights of children with disabilities were being upheld in practice. The delegation noted that in this area, awareness-raising had proved crucial and involved a concerted effort by all relevant ministries. Radio was cited as a fundamental tool in this regard. The delegation also explained how workshops and conferences had promoted inclusive education and equal opportunities. Other initiatives included sporting and theatrical programmes for children with disabilities often led by the Ministry of Youth, had also been carried out with positive effect.

### ***Harmful traditional practices***

The Committee asked to be informed about the current situation regarding harmful traditional practices. The delegation reiterated that early marriages were not recognised by the law negating access to civil rights like the right to property. The delegation took note of the Committee's concern regarding customary marriage.

### ***Adolescents' health***

Regarding adolescent health, the Committee asked about access to contraception and reproductive health services, including counselling and confidential advice. The delegation reiterated that abortion was illegal but highlighted measures and accessible information pertaining to adolescent health. School initiatives had been employed to raise awareness about phenomena such as 'baby dumping' and HIV/AIDS.

A school module titled 'life skills' encouraged abstinence first and foremost but also taught safe sex practice including contraceptive measures. Recent news articles contended that the

general public thought access to contraception should be made available in secondary schools though this had not yet been implemented. A conference about learner pregnancy had also been held specifically aimed at ‘empowering the girl child’. The delegation explained that the education sector policy on Prevention and Management of Teenage Pregnancy specifically focused on the prevention of learner pregnancies but where prevention failed, encouraged young mothers to continue in education. Children were also targeted through comics and other types of child-friendly material.

### ***Climate change***

The Committee asked about the effects of climate change on the health of children in the State party as well as crisis-management planning for the future. The delegation confirmed that from 2010 to 2012 the State party had been devastated by natural disasters which had destroyed infrastructure and key institutions such as schools. Although somewhat anticipated, the full extent of the damage could not have been foreseen. In preparation for future incidents, a Committee on Disaster Management had been established and early warning mechanisms had been introduced. The delegation also detailed improvements made to emergency resettlement camps including attempts to install kitchen and schooling facilities. The school curriculum had also been amended to allow those children affected to catch up on missed work.

### ***Uranium mining***

The Committee asked about the impact of uranium mining and what measures were in place to regulate this industry. The delegation confirmed that safeguards had been put in place, initiated through a process of impact assessment involving all relevant stakeholders. As a Member State of the International Atomic Energy Agency (IAEA), these mining sites were subject to periodic visits to maintain their compliance with international standards. To date, there had been no communication from these investigators suggesting a breach of standards.

## **Education, Leisure and Cultural Activities**

### ***School development funds***

The Committee welcomed the implementation of free primary education from 2013 and asked about any progress made to abolish the school development funds as mentioned in the State Report. School development funds were fees made payable to schools to cover certain costs. Children that were unable to pay were at risk of discrimination and exclusion.

### ***Girls and education***

The Committee expressed concern about sexual harassment in schools and high dropout rates amongst girls. The delegation confirmed that there was a teacher’s code of conduct but that violations did occur. It was explained that complaints of sexual harassment could be taken to any of the regional offices of the Ministry of Education.

One of the key challenges in adequately addressing sexual harassment of girls in schools settings was data collection. The delegation explained that the monitoring system was not automated and perpetrators were often undocumented and were likely to reoffend in a different region. An automated system was being developed to prevent the continuation of this phenomenon.



### ***School enrolment and attendance***

The Committee was concerned that only 40 to 50 per cent of children continued studying after junior high school. The delegation offered several reasons for the relatively low retention rate including: poverty, inability to pay the school development fund and parent mobility, which caused the child to become 'lost in the system'. The delegation believed that free primary education would combat many of these problems. Further measures included the instigation of a School Feeding Programme, currently offered to approximately 300 learners.

### ***Vocational training***

The Committee asked about alternatives to secondary education including vocational training. The delegation described the Namibia College for Open Learning where grades 10 to 12 could be repeated. Whilst previously the emphasis was placed on keeping children with their peers as they progressed through the education system, research had shown this to be a flawed approach. A new policy had been adopted, placing emphasis on taking decisions appropriate to each child, on a case-by-case basis. The child would only pass on to a higher grade if it could be demonstrated that he or she could keep up with the workload. It was confirmed that some schools offered vocational training including places for children with special needs.

### ***Early childhood development***

The Committee commended the Early Childhood Development Project 2012-2017 and asked about the capacity of the Ministry of Gender Equality and Child Welfare as its chief coordinator.

## **Special Protection Measures**

### ***Child labour***

The Committee asked about the age limit for children engaged in hazardous work. The delegation stated that child labour mainly occurred in rural areas, particularly on farms. It was noted that labour inspectors visited these sites unannounced and that under the Labour Act (No. 11 of 2007) where violations had been identified, cases had been brought to court. It was clarified that children under 14 years of age could not work and that those under 16 years could not engage in hazardous work. It was confirmed that in 2012, directives had been received from the Prime Minister pertaining to the ratification of ILO Convention 182 on the Worst Forms of Child Labour. It was noted that once the Child Care and Protection Bill came into force the plan would be to harmonise the working age with the age of mandatory education. It was further explained that the government had established a Commission of Inquiry to devise a strategy for a new law on domestic workers. Such law would include minimum wage stipulations; however, to date, no direction from the government had been received regarding the ratification of ILO Convention 189 on Decent Work for Domestic Workers.

### ***Juvenile justice***

The Committee asked for clarification on the age of criminal responsibility. The delegation noted that the age of responsibility was set out in the law as seven years old but explained that no one under the age of 12 could be incarcerated. Children between 7 and 12 could not be detained even if charged.

Concerning detention conditions of minors, a person under 21 years would not be held in the same facility as adults but would be placed in a juvenile centre. Children aged between 12 and 16 years could not be held in pre-trial detention, but would instead be released under the protection of their parents or guardian as provided by the Children's Act 1960. It was explained that the Child Care and Protection Bill would provide preventative measures as well as alternatives to detention. Regarding process, regular courts were utilised to try juvenile offenders but sessions were held 'in camera', prohibiting public admission.

Regarding child witnesses the delegation explained the Child Witness Support Programme, run by a joint team from the Ministry of Gender Equality and Child Welfare, the Ministry of Justice, the Ministry of Security and NGOs. Through this Programme children could give testimony in a child-friendly environment and without coming face-to-face with the perpetrator. The Ministry of Gender Equality and Child Welfare had invested significantly in the introduction of specialised legal training for personnel involved in this process. The delegation noted that this had proved challenging as prosecutor turnover remained high and resources were lacking.

### ***Conditions of detention***

Pertaining to the deprivation of liberty, children held in detention centres were kept separately from adults, in line with the Correctional Services Act No. 9 (2012). It was emphasised that whilst the State party had inherited an old prison system, the post-independence government had built rehabilitation centres. The construction of detention centres specifically for minors had originally been planned but the prison authority advised the government that due to low numbers of children in conflict with the law such a structure would not be necessary.

### ***Children in Armed Conflict***

The Committee asked information pertaining to the rehabilitation of former child soldiers from other countries, notably the Congo.

### ***Refugees***

The Committee asked about the State party's reservations to the 1951 Convention on Refugees. The delegation stated that since 2003 the State party had experienced relative peace and stability across its borders. Notwithstanding, measures had been put in place to receive people involved in conflicts in the region. Refugee centres afforded the same protection to refugee children as that provided to children resident in the State party, including access to schooling, feeding programmes, clothing and counselling.

## **Concluding Remarks**

Ms Wijemanne thanked the delegation for their frank dialogue and commitment to child rights and noted that many important areas had been covered in the dialogue. The Country Rapporteur stated that the delegation's honest responses had facilitated the sharing of vital information and clarification of many issues. She highlighted the need to extend access of key services to children, especially adolescents. She also recommended that addressing the prevalence of sexual abuse and corporal punishment be put higher on the government agenda.

The head of delegation thanked the Committee and affirmed the commitment of the government. Ms Sioka stated that Namibia had advanced considerably in terms of economic growth but the State party still faced many challenges in harmonising its law and policy with

the CRC. She emphasised new policy and legislative developments in Namibia and requested technical assistance from the Committee in five areas: the process of acceding to the Hague Conventions; analysing the human rights impact of all allocated resources for children's services; the strengthening of the data collection systems; streamlining mechanisms for the coordination of children's services and conducting a survey on teenage pregnancy.