



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

Sixty - first session

17 September – 5 October 2012

### Consideration of reports submitted by States parties under article 44 of the Convention

#### Concluding observations: Namibia

1. The Committee considered the consolidated second and third periodic reports of Namibia (CRC/C/NAM/2-3) at its 1732th and 1733th meetings (see CRC/C/SR.1732 and 1733) held on 20 September 2012, and adopted, at its 1754th meetings, held on 5 October 2012, the following concluding observations.

#### I. Introduction

2. The Committee welcomes the submission of the consolidated second and third periodic reports of the State party (CRC/C/NAM/2-3) and the written replies to its list of issues (CRC/C/C/NAM/Q/2-3/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multi-sectoral delegation of the State party.

#### II. Follow-up measures undertaken and progress achieved by the State party

3. The Committee also welcomes the adoption of the following legislative measures:

- (a) Children's Status Act No. 6 of November 2008;
- (b) Labour Act No. 11 of 2007;
- (c) Criminal Procedure Amendment Act No. 24 of December 2003;
- (d) Maintenance Act No. 9 of July 2003;
- (e) Combating of Domestic Violence Act No. 4 of June 2003;
- (f) Education Act No. 16 of December 2001;
- (g) Combating of Rape Act No. 8 of April 2000.

4. The Committee also welcomes the ratification of :
  - (a) Optional Protocol on the involvement of children in armed conflict (2002);
  - (b) Optional Protocol on the sale of children, child prostitution and child pornography (2002);
  - (c) Convention on the Rights of Persons with Disabilities (2007);
  - (d) Optional Protocol to the Convention on the Rights of Persons with Disabilities (2007);
  - (e) Optional Protocol to the Convention on the Elimination of Discrimination against Women (2000);
  - (f) United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2002);
  - (g) ILO Convention No. 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour (2000).
5. The Committee also welcomes the following policy measures:
  - (a) The National Agenda for Children (2012-2016), June 2012;
  - (b) The Education for All National Plan of Action 2005-2015;
  - (c) Fourth National Development Plan containing important provisions for children, including an emphasis on Early Childhood Development (July, 2012);
  - (d) The National Action Programme on the Elimination of Child Labour (January, 2008);
  - (e) The Education Sector Policy for Orphans and Other Vulnerable Children in Namibia (2008);
  - (f) The Education and Training Sector Improvement Programme (February, 2006);
  - (g) National Plan of Action for Orphans and Vulnerable Children (October, 2007);
  - (h) The National Policy on HIV/AIDS for the Education Sector (January, 2003).
6. The Committee notes as positive the invitation extended by the State party to the United Nations special procedures mandates.

### **III. Factors and difficulties impeding the implementation of the Convention**

7. The Committee takes note of the fact that the State party is one of the countries most affected by climate change and the increasing impact of natural hazards, such as floods, storms and drought, leading to changes in the disease patterns, reduced agricultural outputs and food insecurity.

## IV. Main areas of concerns and recommendations

### A. General measures of implementation (arts. 4, 42 and 44, para. 6 of the Convention)

#### The Committee's previous recommendations

8. The Committee, while welcoming the State party's objective assessment of the child rights situation and its efforts to implement the concluding observations on its previous reports (CRC/C/15/Add.14, 1994), regrets that some of the Committee's recommendations contained therein have not been implemented.

9. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report of Namibia under the Convention (CRC/C/15/Add.14, 1994) that have not been implemented or sufficiently implemented, particularly those related to legislative reform, discrimination against girls and children with disabilities, adoption, high incidence of child labour and administration of juvenile justice.

#### Legislation

10. While welcoming the initiatives to review laws from the pre-independence period, the Committee regrets the failure of the State party to adopt and implement key national legislation concerning children, as required by the Convention. In particular, the Committee notes with concern that despite discussions for over a decade, two notable laws on children's rights, the Child Care and Protection Bill and the Child Justice Bill, have not yet been adopted. Furthermore, noting the existence of plural legal systems, the Committee is concerned that the customary law and practices are not consistent with the principles and provisions of the Convention, in particular those relating to the minimum age of marriage, divorce, and inheritance.

**11. The Committee urges the State party to expedite the revision and adoption of pending legislation on children's rights, particularly the Child Care and Protection Bill, and the Child Justice Bill. The Committee also recommends the State party to incorporate into all proposed and existing legislation the principles and provisions of the Convention, and in the meantime, take measures to ensure that in case of conflict, the constitutional provisions and statutory laws prevail over the customary law, and that children and women have full access to the formal justice system.**

#### Comprehensive policy and strategy

12. The Committee notes with appreciation that the State party launched the National Agenda for Children, a five-year framework (2012-2016), in June 2012, guiding all sectors in the State party towards fulfilling their obligations to protect and promote children's rights.

**13. The Committee recommends the State party to allocate adequate human, financial and technical resources for the implementation of the National Agenda for Children, and set up an effective monitoring and evaluation mechanism to track the progress achieved in the implementation of the plan.**

#### Coordination

14. The Committee notes that the Ministry of Gender Equality and Child Welfare was established as the leading coordinating body for the protection and promotion of children's rights; however, it notes with concern the information provided by the State party that the

Ministry lacks adequate staff and resources. The Committee is further concerned that various government departments and ministries have different coordination frameworks for strategic policies across regions and constituencies, which leads to overlapping mandates and roles in the implementation of child rights, negatively affecting the decision making and implementation of policies.

**15. The Committee urges the State party to reinforce the coordination role of the Ministry of Gender Equality and Child Welfare by ensuring that the Ministry has a high status and authority, including adequate human, technical and financial resources to effectively coordinate actions for children's rights across different sectors as well as effectively monitor the implementation of the National Agenda for Children (2012-2016). Furthermore, the Committee recommends the State party to review its national, regional and local coordination mechanisms to streamline coordination processes, and reduce duplication between different sectors.**

#### **Allocation of resources**

16. While noting that the State party has allocated considerable resources in its national budget to the social sectors, particularly in education, the Committee is concerned that such a level of spending has not necessarily resulted in improved outcomes in many areas of children's rights, including the education sector. The Committee also notes with concern that the State party has not yet undertaken a child rights approach to budgeting to track the allocation and use of resources for children across different sectors.

**17. The Committee urges the State party to:**

**(a) Monitor public expenditure on children to ensure equity of resources across different sectors and positive outcomes for all children;**

**(b) Utilize a child rights approach in preparing the State budget by implementing a tracking system for the allocation and use of resources for children across key ministries. The Committee also urges that this tracking system be used for impact assessments on how investments in any sector serves the best interest of the child, ensuring that any differential impact of such investment on girls and boys is adequately reflected;**

**(c) Ensure transparent and participatory budgeting through public dialogue and participation, in particular that of children, and ensure proper accountability by local authorities;**

**(d) Define strategic budgetary lines, particularly for children in marginalized situation, those living in poverty, rural areas or in vulnerable situations, which require affirmative social measures (such as measures to eliminate discrimination against girls, strengthen birth registration programs, provide free and easy access to health care), and ensure that such budgetary lines are protected even in situations of crisis; and**

**(e) Take into account the recommendations of the Day of General Discussion of 21 September 2007 devoted to "Resources for the rights of the child - responsibility of States."**

#### **Data Collection**

18. While the Committee welcomes that the National Household Income and Expenditure Survey 2009/10, included for the first time a child poverty assessment, it is concerned about the absence of a comprehensive data collection system for the disaggregation and analysis of data on all children under the age of 18. The Committee also regrets the lack of information on the cases of violence against children, including corporal

punishment and children with disabilities, disaggregated by sex, age, socio-economic background, geographic location, and those attending and/or out of schools.

**19. The Committee encourages the State party to set up a comprehensive data collection system with the support of its partners and analyse the data collected on children as a basis for assessing progress achieved in the realization of children's rights. The data collected should be disaggregated, inter alia, by age, sex, ethnicity, geographic location and socioeconomic background to facilitate analysis of the situation of all children, in particular on those groups of children who are in need of special protection, such as girls, children with disabilities and those living in poverty. The Committee also recommends the State party to collect systematic data on cases of violence against children, in particular sexual violence and corporal punishment, including by requiring all schools, alternative care institutions and state structures to report all instances of violence against children.**

#### **Independent monitoring**

20. The Committee is concerned about the lack of children's right division, within the Office of the Ombudsman which is accessible to all children. The Committee is also concerned that limited staff and resources have been provided to the Office of the Ombudsman and the staff have not received any specific training on children's rights, which severely constraints 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 that the State party seek technical assistance from, inter alia, UNICEF, UNHCHR and OHCHR.**

#### **Dissemination and awareness-raising**

22. The Committee notes as positive the State party's initiatives to raise awareness of children's rights, including through the "Day of the Namibian Child", the "Day of the African Child" and the publication of a child-friendly version of the Convention in English language, but remains concerned that the Convention and the Committee's previous Concluding Observations (CRC/C/15/Add.14, 1994) have not been translated into local languages and widely disseminated.

**23. The Committee recommends that the State party continue and strengthen its programs to raise awareness of children's rights and encourages the State party to translate the Convention and the Concluding observations into local languages, and incorporate them into its awareness raising programs.**

#### **Training**

24. The Committee is concerned that all professionals working with or for children, including government staff, law enforcement officials, health professionals, social workers do not receive adequate and systematic training on children's rights.

**25. The Committee recommends that the State party strengthen its efforts to ensure that professionals working with or for children are adequately and systematically trained on children's rights, in particular teachers, school administrators, law enforcement officers, staff at the Office of the Ombudsman,**

**Women and Children's Protection Units, Ministry of Gender Equality and Child Welfare, journalists and civil society organizations. In this regard, the Committee reminds the State party of its obligations to ensure that adequate human, technical and financial resources are available for a systematic and long-term training on children's rights.**

#### **Child rights and business sector**

26. The Committee notes the State party's information that as a member of the International Atomic Energy Agency, it has complied with its international obligations to guarantee the safety of uranium activities. However, it is concerned that multinational and national companies in the country, notably the mining and uranium producing industries, are operating in the absence of clear regulatory frameworks to ensure that international human rights, environment and other standards, especially related to children and women rights, are adhered to, in order to protect natural resources such as land, air and water and the persons, families and communities affected by high levels of radioactive toxicity and pollution. In addition, the Committee notes with concern that the Environmental Management Act, which has important safeguards relating to environmental impact assessments prior to licensing and monitoring compliance with the law, has also not entered into force. It also notes with concern that issues related to the environmental and health impact of uranium mining are neither discussed nor communicated to the persons concerned or disclosed to the public.

**27. The Committee recommends that the State Party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly with regard to child rights, and in light of Human Rights Council resolutions 8/7 of 18 June 2008 (para. 4(d)) and resolution 17/4 of 16 June 2011 (para. 6(f)). In particular, it recommends that the State party:**

**(a) Establish a clear regulatory framework for the mining and uranium producing industries operating in the State party to ensure that their activities do not impact on human rights or endanger environment and other standards, especially those related to children and women rights;**

**(b) Ensure effective implementation by companies, particularly the uranium mining industry, of international and national environmental and health standards, and that the implementation is monitored, and appropriately sanctioned and remedies provided when violations occur, and that appropriate international certification is sought;**

**(c) Undertake assessments, consultations with and disclosure to the public by companies on plans to address environmental and health pollution and the human rights impact of their activities; and**

**(d) Be guided by the UN Business and Human Rights Framework adopted unanimously in 2008 by the Human Rights Council while implementing these recommendations.**

#### **Definition of the child (art. 1 of the Convention)**

28. The Committee reiterates its previous concern that the definitions of the child in national legislation vary widely and are contradictory (CRC/C/15/Add.14, para 6, 1994). In particular, it is concerned that the State party's Constitution defines child as anyone under the age of 16 years, which is not compatible with article 1 of the Convention. The Committee is gravely concerned that the Married Persons Equality

Act, which sets the minimum age of marriage at 18, does not apply to customary marriages.

**29. The Committee strongly recommends the State party to:**

(a) Review and amend the Constitution and all existing legislation to harmonize the overall definition of the child to comply with the provisions of the Convention, and ensure that all existing legislation affords full protection to all children under 18 as well as respects their evolving capacities and increased autonomy; and

(b) Ensure that the provision of the Married Persons Equality Act related to minimum age of marriage is applicable to customary marriages.

## **C. General principles (arts. 2, 3, 6 and 12 of the Convention)**

### **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 National Policy on HIV/AIDS. 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 related 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 Married Persons Equality Act of 1996 to eliminate all discriminatory provisions, including those affecting marriage, land ownership and inheritance rights; and

(d) Include detailed information in its next report on measures adopted to prevent the application of customary law which discriminates against girls and women or has the effect of creating or perpetuating discrimination against girls.

**Best interests of the child**

32. The Committee notes that the principle of the best interests of the child is explicitly protected by the Constitution and the proposed Child Care and Protection Bill and the Child Justice Bill. Nevertheless, the Committee is concerned that this principle is not adequately applied by legislative bodies, and therefore, is absent in most legislation, policies, and programmes concerning children. The Committee is further concerned at the lack of awareness on the principle of the best interests of the child among the general public, including traditional and religious leaders and government officials.

**33. The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate this to the public, including traditional and religious leaders, and private social welfare institutions, courts of law, administrative authorities and legislative bodies.**

**Right to life, survival and development**

34. The Committee expresses grave concern at the abandonment of new-born children (or “baby-dumping”) and infanticide in the State party, often resulting from the high number of teenage pregnancies, child rape and inadequate access to sexual and reproductive health care and information.

**35. The Committee reminds the State party of its obligation to ensure the right to life, survival and development for all children by taking all necessary measures, including addressing the root causes of teenage pregnancies, strengthening support for pregnant adolescents and provide them with adequate sexual and reproductive health services.**

**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 one third of the children under the age of five 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 that 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; and

(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 to:**



(a) Strengthen its efforts to ensure immediate and universal birth registration, including through reforms in the Birth, Marriages and Death Registration Act of 1963; in the meantime, take immediate special measures to register the births of all children and provide free birth certificates to all children without any discrimination;

(b) Intensify public awareness campaigns on the importance of birth registration;

(c) Establish effective procedures to identify unaccompanied and separated asylum-seeking and refugee children and immediately undertake special measures to register their births;

(d) Withdraw its reservation to Article 26 of the 1951 Convention, and allow freedom of movement to the refugees and asylum-seekers; and

(e) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

## **E. Violence against children (articles 19, 37(a) and 39 of the Convention)**

### **Corporal punishment**

38. The Committee notes that the Education Act No. 16 of 2001 prohibits corporal punishment in schools and the Supreme Court ruling of 1991 ruled that corporal punishment is unlawful in school and as a sentence for crime. However, the Committee is gravely concerned about the information provided by the State party that:

(a) The practice of corporal punishment remains widespread in all settings, including in schools;

(b) Certain new legislation, such as Combating of Domestic Violence Act (No 4 of 2003) and laws prohibiting corporal punishment in schools are not fully enforced in practice; and

(c) There is an absence of legislation that explicitly prohibits corporal punishment in the home, penal system and alternative care settings. In addition, the Committee deplores the fact that ‘reasonable chastisement’ of a child is a common law defense to the crimes of corporal punishment.

**39. The Committee strongly calls upon the State party to:**

(a) **Pass as a matter of priority, the Child Care and Protection Bill with the view to prohibiting corporal punishment under civil and customary law and in all settings, including in the home, school, and alternative care settings;**

(b) **Ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible for corporal punishment;**

(c) **Immediately repeal all provisions authorising corporal punishment;**

(d) **Introduce sustained public education, awareness-raising and social mobilization programmes, involving children, families, communities and religious leaders, on the harmful effects, both physical and psychological, of corporal punishment, with a view to changing the general attitude towards this practice, and to promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment; and**

(e) **Ensure that all school teachers and personnel complete mandatory trainings on the rights of child, on the harmful effects, both physical and psychological, of corporal punishment and encourage positive behavioral support and alternative forms of discipline.**

#### **Sexual exploitation and abuse**

40. While the Committee notes that the State party has established Women and Child Protection Units in all regions to strengthen child protection, the Committee is alarmed at the high prevalence of abuse and violence against women and children, including rape and sexual abuse in schools and at home. In particular, the Committee is gravely concerned about:

(a) The high incidence of child rape by family members, caretakers, teachers and local leaders in the State party;

(b) The low prosecution for crimes of sexual violence against children and the pervasiveness of extra-judicial settlements, leading to impunity for perpetrators. In this regard, the Committee notes with concern the delay in amending the Combating of Rape Act 8 of 2000; and

(c) The limited access to justice, shelter, medical services, counseling and compensation awarded to victims under the national legislation.

**41. The Committee urges the State party to:**

(a) **Ensure that legislation relating to sexual abuse and exploitation is effectively enforced, and that perpetrators of such crimes are brought to justice and punished with sanctions proportionate to their crimes;**

(b) **Amend without delay the Combating of Rape Act 8 of 2000 in order to adequately protect all child victims and witnesses of sexual violence and abuse;**

(c) **Strengthen the capacity of Women and Child Protection Units in all regions, and establish, as a matter of urgency, effective and child-friendly procedures and mechanisms to receive, monitor and investigate complaints;**

(d) **Undertake awareness raising among children, especially among girls to encourage reporting sexual violence and abuse in schools; and**

(e) **Develop a national strategy to respond to the shelter, health, legal and psychosocial needs of child victims of sexual exploitation and violence.**

#### **Harmful practices**

42. The Committee is gravely concerned at the continued prevalence of sexual initiation practices and early marriage in the State party. In addition, the Committee is concerned that the State party has not taken any steps to systematically document and curb such harmful practices, including through the introduction of sanctions.

**43. The Committee calls upon the State party to ensure that adequate criminal and civil sanctions are imposed on individuals, including on traditional leaders who encourage or are involved in sexual initiation practices. In addition, the State party should implement sensitization programmes involving families, community leaders and society at large, including children themselves, to curb the practices of sexual initiation rites and early marriages, particularly in rural areas.**

### **Freedom of the child from all forms of violence**

**44. Recalling the recommendations of the United Nations Study on violence against children (A/61/299, 2006), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State Party take into account general comment No. 13 (CRC/C/GC/13, 2011), and in particular:**

- (a) Develop a comprehensive national strategy to prevent and address all forms of violence against children;**
- (b) Adopt a national coordinating framework to address all forms of violence against children;**
- (c) Pay particular attention to the gender dimension of violence; and**
- (d) Cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.**

### **Standard of living**

45. While taking note of the national development framework, Vision 2030 and the Fourth National Development Plan which aims to provide a comprehensive child protection and family support system, the Committee is, nonetheless, concerned that 34.4 per cent of the State party's children live below the poverty line, and malnutrition, mortality and morbidity rates of children in poverty are high, and 67 per cent of Namibians do not have access to improved sanitation. In this context, the Committee expresses concern about the lack of basic services in the State party to support families in raising their children, and ensuring children's rights to holistic development.

**46. The Committee calls on the State party to take all necessary measures to address child poverty and vulnerability, including through family support services and social protection to disadvantaged families, including targeted programmes for families that are particularly vulnerable to poverty, implemented at community level.**

## **F. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**

### **Family environment**

47. The Committee notes with appreciation that the State party provides disability, foster care and child maintenance grants and also notes that the Fourth National Development Plan (2012/13 - 2016/2017) advocates for the gradual expansion of the grant system to include all children and additional measures to empower families to look after their children. However, the Committee is concerned that due to a shortage of social workers and community child workers, the measures do not yet reach all families and children that require them. In addition, the Committee is concerned about:

- (a) The fact that 28 per cent of Namibian children under the age of 18 are orphans and/or 'vulnerable,' 34 per cent do not live with one of the parents, and only 26 per cent of all children live with both parents; and**
- (b) The unequal parental responsibilities in families and the high incidence of households headed by single mothers.**

**48. The Committee strongly recommends the State party to:**

(a) Expedite the expansion of the grant system and strengthen consultation with civil society organizations in the monitoring and review of the system to ensure increased access to grants for families, such as those living in poverty and single mothers families;

(b) Take additional measures to further increase the number of social workers and community child workers;

(c) Develop parental education and awareness, for example, by providing support to parents, including training in parental guidance, skills and joint parental responsibilities aimed at changing practices and stereotypes regarding gender roles and parenting; and

(d) Take immediate measures, to avoid separation of children from the family environment by providing appropriate assistance and support services to parents and legal guardians in the performance of child-rearing responsibilities.

#### **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 inter-country adoptions. The Committee is concerned that in the absence of a legal framework and a specific body to monitor domestic and inter-country adoption, children are exposed to exploitation and child trafficking.

50. The Committee recommends the State party to:

(a) Urgently adopt a comprehensive law on domestic and inter-country 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 exploitation and trafficking of children;

(b) Entrust the responsibility of monitoring and collecting data on domestic and inter-country 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; and

(c) Expedite the ratification the 1993 Hague Convention on Inter-Country adoption.

### **G. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention).**

#### **Children with disabilities**

51. The Committee reiterates its previous concern regarding the discrimination against children with disabilities (CRC/C/15/Add.14, para 7 and 15, 1994) and that the State party continues to adopt a social welfare approach to disability. The Committee notes that the State party provides grants to children with disabilities; however, it notes with concern that only 10 per cent of them are accessing the disability grant. The Committee is particularly concerned that:

(a) Children with disabilities, especially girls and those living in rural areas, continue to face multiple forms of discrimination and serious obstacles to the full

enjoyment of their rights, including limited access to education, healthcare and other social services.

(b) The establishment of different structures and policies, in particular the National Disability Council and the National Policy on Disability of 1997 have not resulted in sufficient coordinated and concerted actions for children with disabilities. While noting that the National Disability Council is tasked with monitoring the implementation of Namibia's National Policy on Disability, the Committee regrets the lack of information on the Council's monitoring activities in the State party's report.

**52. Recalling Committee's general comment No. 9 (CRC/C/GC/9, 2006), the Committee urges the State party to adopt a human rights based approach to disability and specifically recommends to:**

(a) **Ensure that all legislation on children, including the proposed Child Care and Protection Bill include a specific prohibition of discrimination on the ground of disability, and develop holistic and coordinated programs across ministries on the rights of children with disabilities;**

(b) **Ensure that children with disabilities are able to exercise their right to education, and provide for their inclusion in the mainstream education system to the greatest extent possible, including by providing special training to teachers, increasing facilities for children with disabilities and by making schools more accessible;**

(c) **Provide effective remedies in case of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to all children with disabilities, including girls and their parents and/or others caring givers;**

(d) **Promptly implement the wide range of policy and administrative recommendations provided by the Health and Social Services System in 2008, including changes to the national healthcare system in order to improve health care services for persons with disability; in addition, the State party should strengthen efforts to ensure that necessary professional (i.e. disability specialists) and financial resources are available, especially at the local level, and promote and expand community-based health services programmes, including to parents, caregivers and parent support groups; and**

(e) **Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating de facto discrimination against children with disabilities.**

#### **Health and health services**

53. The Committee notes as positive the National Health Strategic Plan (2009-2013). However, it is concerned at the high level of maternal mortality, child malnutrition, limited access to sanitation and clean water, poor standard of health facilities, and health disparities among children living in rural and remote areas. The Committee is also concerned about the gaps in human resources in the health sector and the efficient allocation of the health budget.

**54. The Committee recommends that the State party undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services with special attention to children in vulnerable situations, especially children living in poverty and rural areas. It further urges the State party to address socio-economic disadvantages and other root causes for the existing health deficits. In particular, the Committee recommends the State party to:**

(a) Strengthen efforts to address, as matter of urgency, the high rates of malnutrition of children, and develop educational programs, including campaigns to inform parents about basic child health and nutrition, hygiene and environmental sanitation and reproductive health;

(b) Seek financial and technical assistance from, inter alia UNICEF, WHO among others, in this regard;

(c) Improve access to maternal care services particularly in rural areas by improving health infrastructure and increasing the availability and accessibility to Emergency Obstetric and Neonatal Care and skilled birth attendants at lower and district level health facilities; in addition, take special measures to ensure that pregnant adolescents have easy access to sexual and reproductive health care; and

(d) Implement the recommendations by the UN Special Rapporteur on the Right to Health and the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, especially the recommendation on extending the mandate of the Ombudsman to promote and protect economic, social and cultural rights, including the rights to water and sanitation.

#### **Mental health**

55. The Committee is alarmed by the high levels of suicides among children in the State party. The Committee notes with grave concern the Ministry of Health and Social Services' assessment that suicide rate among the young age group has increased in recent years. The Committee is also concerned at the lack of data on mental health problems, inadequate availability of trained mental health practitioners in schools and rural areas, and limited awareness amongst professionals working with children on the importance of identifying and addressing mental health concerns.

56. The Committee recommends that the State party to:

(a) Urgently review the Namibian mental health policy and adopt a comprehensive national child mental health policy as recommended by WHO, and ensure that mental health promotion, counseling, prevention of mental health disorders in primary health care, schools, communities, and child-friendly outpatient and inpatient child mental health services are integral features of the policy;

(b) Take urgent action to strengthen its efforts to prevent suicide among children and youth, including by increasing available psychological counseling services and social workers in schools and communities, and ensure that all professionals working with children are adequately trained to identify and address early suicidal tendencies and mental health problems; and

(c) Seek technical assistance from the World Health Organization (WHO) and other national and international institutions in the development and implementation of policies and programs on mental health for children, including those with learning disability.

#### **Adolescent health**

57. While welcoming various policies and initiatives undertaken by the State party to improve adolescent health, the Committee is extremely concerned at the high number of teenage pregnancies, including those as a result of rape, the high incidence of sexually transmitted infections and drug and alcohol abuse among adolescents. In particular, the Committee is concerned about:

(a) Namibia's punitive abortion law and various social and legal challenges, including long delays in accessing abortion services within the ambit of the current laws for pregnant girls. In this regard, the Committee notes with concern that such restrictive abortion law has led adolescents to abandon their infants or terminate pregnancies under illegal and unsafe conditions putting their lives and health at risk, which violates their right to life, freedom from discrimination and their right to health;

(b) Inadequate access by teenagers to reproductive health education and services, including contraceptives and emergency care. The Committee further regrets the absence of information in the State party's report on the measures taken to ensure children's right to sexual and reproductive health care with or without parental consent.

**58. Referring to its general comment No. 4 (CRC/GC/2003/4 2003), the Committee recommends that the State party to:**

**(a) Review and amend its legislation concerning abortion to prevent adolescents from resorting to clandestine and unsafe abortions, unwanted pregnancies, maternal mortality and the abandonment of infants;**

**(b) Intensify and expand its efforts to ensure the accessibility and availability of sexual and reproductive health services, including contraceptives, institutional birth services and health care at delivery, particularly in rural areas, and expedite the implementation of its policies and programs to address the high rate of teenage pregnancies through preventative actions, and ensure that pregnant adolescents have easy access to confidential counseling and support;**

**(c) Strengthen reproductive health education, including sex education for adolescents, inter alia, making health education part of school curricula and improve knowledge and the availability of reproductive health care services with a view to preventing HIV/AIDS and other sexually transmitted infections and reducing teenage pregnancies;**

**(d) Monitor the implementation of policies and services designed to prevent teenage pregnancies, substance abuse and HIV/AIDS infection and other sexually transmitted diseases and ensure that information on such policies and services is widely disseminated to adolescents, including girls, families, schools administrative officers, government officials, and health care providers; and**

**(e) Ensure that all children who abuse alcohol and/or use tobacco and drugs have access to effective services for rehabilitation from substance abuse, including access to treatment, counseling, recovery and reintegration.**

#### **HIV/AIDS**

59. The Committee welcomes the progress of the State party in reducing HIV prevalence, achieving a high coverage of Prevention of Mother to Child Transmission of HIV and providing anti-retroviral therapy. However, the Committee is gravely concerned at:

(a) The high HIV/AIDS infections among children, in particular among adolescent girls;

(b) The government policy that requires children less than 16 years of age to get consent of their parents or guardian to access HIV/AIDS voluntary counseling and testing, which severely restricts children's right to information and health care; and

(c) The decrease of funds in the area of prevention and treatment of HIV/AIDS, which could result in the reduction of services and care for children infected or affected by HIV/AIDS.

**60. In light of its general comment No. 3 (CRC/GC/2003/4, 2003), the Committee recommends the State party to:**

**(a) Take legislative measures to ensure that all children, including girls under the age of 16 have free and confidential access to medical counsel and assistance with or without parental consent;**

**(b) Ensure that policies and programs to prevent HIV/AIDS infection, including the National policy on HIV/AIDS for the education sector, which safeguards accessibility and availability of condoms in educational institutions and hostels, are effectively implemented;**

**(c) Strengthen and enforce new policies and programmes to provide care and support for children infected or affected by HIV/AIDS, including programmes to strengthen the capacity of families and the communities to care for such children; and**

**(d) Seek technical assistance from the United Nations Children's Fund (UNICEF) and other international organizations to increase the effectiveness of resource allocation and spending, and help explore additional sources of contributions from national partners.**

#### **Breastfeeding**

61. The Committee is deeply concerned about the information provided in the State party that only 5.7 per cent of all mothers continue exclusively breastfeeding until their child is four to five months old and only 1 per cent of all mother continues to breastfeed until their child is six to eight months. The Committee is also concerned at the absence of information on the steps taken by the State party to promote, protect and encourage breastfeeding, including allocation of funding to breastfeeding education and support. In addition, the Committee remains concerned that the State party lacks national legislation and policies to effectively enforce the International Code of Marketing of Breast milk Substitutes. The Committee also notes with concern that the State party's legislation provides only three months of maternity leave, which, inter alia, prevents mothers from breastfeed their infants.

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

**(a) Strengthen the promotion of exclusive breastfeeding up to the age of 6 months, by extending maternity leave while ensuring the rights of working mothers to a secure employment and salary and social security;**

**(b) Institute a national monitoring system to monitor compliance with the International Code of Marketing of Breastmilk Substitutes;**

**(c) Train health professionals, including professionals working in maternity units and communities on breastfeeding, the significance of initiating it within the first hour following childbirth and the importance of avoiding bottle-feeding or feeding with breast-milk substitutes, to the extent possible and ensure that they provide appropriate support to new mothers; and**

**(d) Initiate country-wide programmes to facilitate the early initiation of breastfeeding in all maternity centers, and strengthen efforts to promote exclusive and continued breastfeeding by providing access to materials, and educating and raising awareness of the public, particularly among new mothers on the importance of breastfeeding and the risks of formula feeding.**



## H. 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 on the education sector. The Committee also welcomes the Education and Training Sector Improvement Programme (ETSIP) 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 text books;

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

(c) The private costs, including 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; and

(d) The high level of drop-out 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 the Committee's general comment No. 1 (CRC/GC/2001/1, 2001), it recommends that the State party continue to strengthen programs and policies to ensure accessibility of quality education for all children in Namibia. In particular, the Committee urges the State party to:**

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

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

**(c) 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; and**

**(d) Implement special education programmes taking into account the needs of vulnerable children, and ensure 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.**

### Early Childhood Development

65. The Committee welcomes the State party's policy on integrated early childhood development (ECD) and the commitment indicated in the National Agenda for Children 2012- 2016 and the Fourth National Development Plan 2012-2017 to provide free government run ECD centers focusing on the poorest sections of society and supporting the training of ECD workers. However, the Committee is concerned about the lack of data on pre-school children, and the capacity of the Ministry of Education and the Ministry of Gender Equality and Child Welfare to effectively coordinate the implementation and evaluation of the multispectral ECD programme.

**66. The Committee recommends the State party to undertake a survey of all pre-school children and accelerate the implementation of the ECD policy through adequate human, financial and technical resources and effective monitoring and evaluation mechanisms, and prioritize children in the most disadvantaged situations,**

including girls and children in rural and remote areas, and the use of efficient community-based approaches where necessary.

**I. Other Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)**

**Economic exploitation, including child labour**

67. The Committee reiterates its previous concern (CRC/C/15/Add.10, para 8, 1994) about the prevalence of child labour, particularly in the informal sector and rural areas. The Committee is particularly concerned about:

(a) The inconsistency between the minimum age for employment in the Labour Act, which is 14 years of age, and the age of completing education which is 16 years;

(b) The reports of exploitation and abuse of children in the domestic and agricultural sectors, including physical abuse, denial of education and long working hours; and

(c) The prevalence of the worst forms of child labour, including involvement of children in hazardous work.

68. **The Committee reiterates its previous recommendation (CRC/C/15/Add.14, para. 21, 1994) that the State party ensure that its policy and legislation on the issue of child labour is in conformity with the provisions of the Convention and relevant ILO Conventions. In addition, the Committee urges that the State party to take all available means to address child labour, with particular emphasis on the worst forms of child labour. The Committee specifically recommends the State party to:**

(a) **Amend the Labour Act raising the minimum age of employment to the level of the age of completing education and the minimum age of employment in hazardous work to 18 years ;**

(b) **Increase inspections and investigation on suspected cases of child labour, including in the agricultural sector, and provide compensation and criminal penalties to improve compliance with child labour provisions;**

(c) **Require employers of agricultural and child domestic workers to report all work-related injuries and serious illnesses to the Office of The Labour Commissioner at the Ministry of Labour and Social Welfare in order to collect and publish better statistics than are currently available about such incidents;**

(d) **Undertake awareness raising programs for the general public on child labour and the enforcement of legal provisions, particularly in farming areas;**

(e) **Ratify the ILO Convention NO 189 of 2011 concerning Decent Work for Domestic Workers,**

(f) **Seek technical assistance from the International Programme on the Elimination of Child Labour of the International Labour Office (ILO-IPEC) in this regard; and**

(g) **Strict enforcement of the labour laws, in particular by ensuring civil and criminal penalties to improve compliance with the provision of access to education for children engaged in employment.**

### **Children in street situations**

69. The Committee welcomes the State party's country-wide campaign to raise awareness on children in street situations and integrate them back into schools. The Committee, however, is concerned at reports that children in street situations are regularly subject to exploitation, abuse, discrimination, stigmatization as well as arrest and detention by police. In addition, the Committee is concerned at the institutionalization of children in street situations in the State party.

#### **70. The Committee recommends the State party to:**

(a) **Develop a comprehensive strategy to protect children in street situations and reduce their number, including identifying the underlying causes, such as poverty, family violence, migration, lack of access to education with the aim of preventing and reducing this phenomenon. In this regard, the Committee calls upon the State party to pay special attention to the specific vulnerability of girls in street situations to sexual abuse, exploitation and early pregnancy;**

(b) **Develop initiatives that offer effective alternatives to institutionalization and facilitate the reunification of children in street situations with their families, whenever feasible and appropriate, taking into account the best interests of the child. In this context, the Committee recommends the State party to develop programs that support their long-term educational and developmental needs, including through psychological support where possible;**

(c) **Ensure that children in street situations are not subject to discrimination, abuse and harassment by public and law enforcement officials and that they are not subject to arbitrary arrest and illegal detention; and**

(d) **Promptly investigate complaints concerning ill-treatment and abuse of children in street situations by police and staff in police custody or in the government detention facilities and initiate disciplinary measures.**

### **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 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 a specific legislation on human trafficking and the lack of prosecutions for trafficking in persons.

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

(a) **Urgently adopt a legislation on human trafficking in line with Palermo Convention and article 35 of the Convention;**

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

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

### **Administration of juvenile justice**

73. The Committee welcomes the Criminal Procedure Amendment Act 24 of 2003 and its provisions on child-friendly courts; however, it is concerned that despite the exceptionally long delay, the Child Justice Bill has not been adopted. The Committee is also concerned about:

- (a) The minimum age of criminal responsibility, which is seven years in the State party, being unacceptably low;
- (b) The children's courts not being operational in all regions;
- (c) The absence of information in the State party report and public domain on the situation of children in conflict with the law;
- (d) The lack of special detention facilities for children, both boys and girls, children being incarcerated with adults, and the poor conditions of detention, including in prisons; and
- (e) The reports that judges do not consistently enforce the amendments to the Criminal Procedure Act 24 (2003).

**74. The Committee reiterates its previous recommendation (CRC/C/15/Add.14, 1994, para 20) that the State party bring its juvenile justice system fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (CRC/C/GC/10, 2007). In particular, the Committee urges the State party to:**

- (a) Urgently update and adopt the pending Child Care and Protection Bill and Child Justice Bill;**
- (b) Amend the age of criminal responsibility to an internationally acceptable level, ensuring that such provision does not allow, by way of exception, the use of a lower age;**
- (c) Ensure that all the provisions related to juvenile justice in Criminal Procedure Amendment Act are effectively enforced, including those related to children's courts;**
- (d) Establish Children's Courts in all the regions of the State party;**
- (e) Provide all professionals working in the juvenile justice system with training on the Convention, other relevant international standards and the Committee's general comment No. 10 on children's rights in juvenile justice;**
- (f) Protect the rights of children deprived of their liberty and improve their conditions of detention and imprisonment, in particular by establishing special prisons for children with conditions suited to their age and needs, and ensuring provision of social services in all detention centers in the country, and, in the meantime, guarantee separation of children from adults in all prisons and pre-trial detention centers throughout the country; and**
- (g) Gather information on the number and legal situation of children in detention, their conditions of detention and cases of children who have been provided with legal assistance and make such information publicly available.**

#### **Child victims and witnesses of crimes**

75. The Committee notes as positive the pilot project developed with NGOs and professionals on the protection of child victims and witnesses of crimes. However, the Committee is concerned about the lack of a mechanism to protect child victims and witnesses of sexual abuse during legal proceedings, which exposes children to further

trauma and insecurity, and that the child witness programmes are not operational in all regions.

**76.** The Committee recommends the State party to accelerate the development and implementation of child victims and witnesses of crimes protection programs in all the regions of the country in order to increase protection for child victims and witnesses and their right to privacy and ensure that the child witness programmes are effectively enforced in all regions.

#### **J. Ratification of international human rights instruments**

**77.** The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the treaties to which it is not yet a party, namely the Optional Protocol to the Convention on the Rights of the Child on Communication procedures, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

**78.** The Committee urges the State party to fulfill its reporting obligations under the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the reports of which are both overdue as of 16 May 2004.

#### **K. Cooperation with regional and international bodies**

**79.** The Committee recommends that the State party cooperate with the African Committee of Experts on the Rights and Welfare of Children of the African Union towards the implementation of the Convention and other human rights instruments, both in the State party and in other African Union member States.

#### **L. Follow-up and dissemination**

**80.** The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, *inter alia*, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court, and to local authorities for appropriate consideration and further action.

**81.** The Committee further recommends that the second and third periodic reports and the written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and its Optional Protocols and of their implementation and monitoring.

#### **M. Next report**

**82.** The Committee invites the State party to submit its next consolidated third to sixth periodic reports by 29 October 2017 and to include in it information on the

implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the reporting guidelines. In the event a report exceeding the page limitations is submitted, the State party will be asked to review and eventually resubmit the report in accordance with the abovementioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, then translation of the report for purposes of examination of the treaty body cannot be guaranteed.

83. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at by the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).

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