

AFRICAN UNION

African Committee of Experts on
the Rights and Welfare of the
Child

الاتحاد الأفريقي



*"An Africa Fit for
Children"*

UNION AFRICAINE

Comité Africain d'Experts sur les
Droits et le Bien-être de l'Enfant

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**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS BY THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC) ON THE REPUBLIC OF NAMIBIA REPORT ON THE STATUTES OF
IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE
OF THE CHILD**

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of Namibia and wishes to acknowledge with thanks the receipt of the initial report (2004-2012) on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter, the Charter). The ACERWC, during its 25th Ordinary Session, which was held from 20- 24 April, 2015 considered Namibia's initial report which was submitted in accordance with State Parties obligation under Article 43 of the African Children's Charter.
2. The Committee takes note of the written replies to its list of issues and commends the State Party for its delegation led by Her Excellency Martha Mbombo, Acting Secretary of Ministry of Gender Equality and Child Welfare for the open and constructive dialogue.
3. The Committee notes with appreciation that the State Party ratified the African Children's Charter and took various initiatives to implement the rights and duties enshrined in the Charter. However, the Committee regrets that the report was submitted with considerable delay, which prevented the Committee from reviewing the implementation of the Charter by Namibia for some years after the ratification.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

4. The Committee commends the State Party among others on the following achievements;
 - a. For ratifying various international and regional human rights instruments;
 - b. For recognizing international and regional instruments ratified by Namibia to be self-executing;
 - c. For adopting the Children Care and Protection Bill;
 - d. For adopting the National Agenda for Children;
 - e. For enacting the Children's Status Act No.6 of 2006;
 - f. For adopting Maintenance Act No.9 of 2003;
 - g. For adopting a National Integrated Early Childhood Development Policy;
 - h. For launching the Campaign for the Accelerated Reduction of Maternal Mortality in Africa (CARMMA);
 - i. For developing a National Policy on Orphans and Vulnerable Children;
 - j. For introducing the Combating Rape Act No. 8 of 2000; and
 - k. For collaborating with CSOs and creating a conducive environment for CSOs to advocate for the rights of children.

III. AREAS OF CONCERN AND RECOMMENDATIONS

A. General measures of implementation

5. The Committee commends the State Party for adopting the comprehensive Child Care and Protection Bill. Therefore, the Committee recommends the Government of Namibia to gazette the Bill within a definite period.
6. The Committee commends the specific achievements the State Party recorded in implementing the National Agenda for Children (NAC) in 2012-2013 and which include the abolishment of School Development Fund.
7. The Committee commends the State Party for addressing the issue of the unduly prolonged process to apply for grant under the Child Care and Protection Bill. However, the Committee is concerned by the existence of unduly long process to apply for grant in practice. Therefore, the Committee recommends the Government of Namibia to take all necessary measures to speed up the process including the establishment of a one-stop center for grant applications.
8. The Committee notes with great concern the increase of orphans from 25,000 in 2004 to 149,412 in 2013. Some reports indicate that one of the contributing factors is lack of medical treatment to adults. In this regard, the Committee recommends the State Party to observe the wellbeing of orphan children and to accelerate treatment access for adults to reduce the increasing number of orphans.

Moreover, the Committee commends the establishment of the Permanent Task Force (PTF) on Orphans and Vulnerable Children as a body for collaboration and monitoring the implementation of the National Agenda for Children. However, the Committee notes with concern that PTF's primary mandate is on orphan and vulnerable children and that there is still lack of coordination among and between stakeholders including the various ministries, and between the government and CSOs. Therefore, the Committee recommends the State Party to establish a mechanism for collaboration of the various stakeholders working with and for children.

9. The Committee further urges the State Party to strengthen its National Statistics Agency and to put in place a comprehensive data collection system and to include disaggregated statistical data under all clusters in its next report to be submitted for the Committee.

10. Applauding the State Party for creating Children's Advocate under the Office of the Ombudsman, the Committee recommends the Government of Namibia to strengthen the capacity of the Children's Advocate through trainings on the African Children's Charter. Furthermore, the Committee recommends the State Party to strengthen the capacity of the National Society for Human Rights as an autonomous body to inquire on human rights violations including violation on children's rights.

11. The Committee commends the State Party for celebrating the Day of the African Child (DAC) in each region every year and encourages the State Party to continue commemorating and celebrating the DAC with the objective of bringing impact on the life of children. Furthermore, the Committee recommends the Government of Namibia to regularly submit a report to the Committee on the commemoration of the Day of the African Child.

B. Definition of the Child

12. The Committee commends the State Party for defining a child as a person below the age of 18 years under the recently adopted Child Care and Protection Bill. However, the Committee is concerned that there still exists a contradiction on the definition of the child in various laws such as the Combating of Domestic Violence Act and the Children's Status Act. Therefore, the Committee urges the State Party to harmonize the definition of the child in all its laws in line with article 2 of the African Children's Charter.

13. In addition, the Committee takes note that the Recognition of Customary Marriages Bill is not yet enacted and the minimum age of marriage for customary marriages is not set. The Committee, thus, urges the State Party to provide the minimum age of marriage at the age of 18 years old in all circumstances in accordance with articles 2 and 21 of the African Children's Charter and to eliminate child marriage.

14. The Committee is concerned that article 14 of the Namibian Constitution which stipulates that persons of full age can start a family, can be subjectively interpreted and may create a loophole on issue of child marriage. Thus, the Committee recommends the State Party to provide for a restricted and specific interpretation of the term 'full age' under article 14 of the Namibian Constitution as one means of fulfilling its obligation under article 21 of the African Children's Charter.

C. General Principles

Non- Discrimination

15. The Committee appreciates the State Party for its effort to ensure that the principle of non-discrimination is observed through programs devised for children from minority groups, children with disability, and vulnerable children. However, the Committee has a concern on Section 20 (4,c) of the Namibian Constitution which provides for an exhaustive list of grounds for non-discrimination. The Committee is also concerned about the existence of discrimination in intestate succession under customary law. Moreover, the Committee is concerned about children from indigenous groups such as the San people who are excluded from accessing basic services.
16. Therefore, the Committee recommends the Government of Namibia to ensure that all children are not discriminated and are enjoying their rights and freedoms irrespective of their parents' or guardians' race, ethnic group, color, sex, language, religion, political or other opinion, national or social origin, fortune, birth or other status. To this effect, the Committee urges the State Party to ensure the observance of the principle of non-discrimination in intestate succession under customary law and to enact the Intestate Succession Bill within a short time frame.

The Best interest of the Child

17. The Committee is deeply satisfied by the legislative measures taken by the State Party to entrench the best interest of the child as a primary consideration in decisions and actions affecting the child. In this regard, the Committee recommends the State Party to supervise and monitor the full application of this principle overriding other interests in all administrative and judicial decisions that affect the life of children.

The Right to Life, Survival and Development

18. The Committee commends the State Party for introducing pentavalent vaccination to reduce child mortality. However, the Committee is concerned by the high level of infant and under-five mortality, malnutrition, infanticide, baby dumping and poor sanitation. Therefore, the Committee recommends the Government of Namibia to adopt a child health policy as a policy intervention to reduce infant and under-five mortality. In addition, the Committee recommends the State Party to adopt and implement programmes for appropriate home care and timely treatment of complications for newborns; integrated management of childhood illness for all children under the age of five; expanded and strong immunization; infant and young child feeding; promotion of breast feeding; and provision of nutrients.

19. Moreover, the Committee recommends the State Party to address the challenges in relation to infanticide and baby dumping by increasing women's and adolescent's access to reproductive health services; encouraging and promoting domestic adoption and foster care; and providing shelters to cater for neglected children.

Child Participation

20. Commending the Government of Namibia for establishing Children's Parliament, the Committee recommends the State Party to continue its support to the Children's Parliament and to take into consideration the views of the Children's Parliament in making decisions that have impact on children.

21. Further, the Committee recommends the State Party to establish and strengthen child friendly courts and procedures for child victims and witnesses; ensure that children are heard in civil judicial proceedings affecting them, including divorce, separation, and adoption; ensure that children have the opportunity to use broadcast media to communicate their own views; and set in place confidential reporting mechanisms for children who are victims of abuse and violence.

D. Civil Rights and Freedoms

Name, Nationality, Identity and registration at birth

22. The Committee commends the State Party for launching several initiatives to eradicate barriers to birth registration by opening hospital-based offices and sub-regional offices in rural areas and regular mobile registration campaigns. However, the Committee has concerns about the legal uncertainty in relation to children born in Namibia to stateless parents and migrants and refugees. In addition, the Committee is concerned about the legal barriers on children's access to birth registration created under the Births, Marriages and Deaths Registration Act, the Marriage Act, and the Migration Control Act.

23. Therefore, Committee recommends the Government of Namibia to circumvent all legal and administrative barriers on access to birth registration through legislative amendment and other appropriate measures. Moreover, the Committee recommends the State Party to fulfill its obligation of ensuring that every child is registered immediately after birth, is named, and acquired nationality by playing a pro-active role such as launching education and sensitization campaigns on birth registration; and ensuring proper coordination between the central civil registration authority and other civil registration offices across the country. To this effect, the Committee highly encourages the State Party to use as guidelines the Committee's General Comment on Article 6 of the African Children's Charter.

Protection of Privacy

24. The Committee commends the State Party for establishing a Media Ombudsman as a means of ensuring the right to privacy. However, the Committee notes that there are instances whereby the media violates the rights of children due to lack of supervision and monitoring mechanisms. The Committee, therefore, recommends the Government of Namibia to strengthen the Media Ombudsman to ensure that children's right to privacy is respected and promoted.

Protection against abuse and torture

25. The Committee commends the State Party for prohibiting corporeal punishment in schools under the Namibian Constitution and the Education Act. The Committee further applauds the State Party for recognizing positive disciplining measures under the Code of Conduct for Teaching Service. As part of the continuous effort to protect children from abuse and torture, the Committee recommends the State Party to abolish corporeal punishment and to promote positive disciplining measures in all settings including at home.

26. The Committee notes with great concern that 41% of rape cases in 2011 were committed against girls under the age of 18. Henceforth, the Committee recommends the State Party to conduct a study to understand the root causes of the matter, to set in place a child friendly reporting mechanism, to establish rehabilitation centers and increase the work pool of psychologists and social workers, to build the capacity of the police to adequately respond to rape cases, to improve the conviction rate of offenders, establish victim support programs, and to continue promoting community outreach efforts with the view of raising awareness.

E. Family Environment and alternative care

Parental Guidance and responsibilities

27. The Committee appreciates the State Party for providing grants to support the family. However, the Committee notes that the grant system has a long process causing children to wait for many years; some even becoming adults before receiving the grant. Therefore, the Committee recommends the Government of Namibia as part of its obligation to assist parents under article 20(2, a) of the African Children's Charter, to eliminate barriers in the grant system and to address the problems that makes the process long.

28. In addition, while appreciating the commitment of the Government of Namibia to increase the amount of grants starting from the financial year in 2014/15, the Committee recommends the State Party to respect its commitment, to make arrangements for

parents to play integral role in the learning process of their children, and to continue and strengthen its action with a view of ensuring children of working parents are provided with basic services.

Family reunification and children deprived of the family environment

29. The Committee, from reports, noted that 36% of children in Namibia are not living with their parents. The Committee, therefore, recommends the State Party to put all effort to ensure family reunification through a system of tracing, legal assistance, travel arrangements, and financial support. To address the need of children whose family cannot be traced, the Committee recommends the State Party to increase its social workers work pool, to build the capacity of existing social workers, to strengthen already existing and to establish new public alternative care facilities, to effectively supervise and monitor alternative care institutions, and to collaborate with CSOs for mobilization of resources. To this effect, the Committee calls upon the State Party to consult the UN Guidelines for the Alternative Care of Children.

Adoption

30. The Committee notes with regret the loophole that is created following the decision of the High Court in 2004 in the *Detmold Case* which led inter-country adoption to be made without the involvement of the Ministry of Gender Equality and Child Welfare. The Committee also regrets that the process to address the loophole is still ongoing. Henceforth, the Committee recommends the Government of Namibia to promptly take actions to fill the gap. To this end, the Committee recommends the State Party to consult the Guidelines for Action on Inter-country Adoption in Africa in measures it adopts and to expedite the process of ratifying the Hague Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoption.

F. Health and Welfare

Children with disabilities

31. The Committee appreciates the State Party for adopting the National Disability Act, National Policy for Mental Health, and the Policy for Orthopedic Technical Services to cater for the needs of children with disability. Further, the Committee applauds the State Party for establishing a National Disability Council, a Disability Unit in the Office of the Prime Minister, and for providing disability grants for children with disabilities. However, the Committee notes that the National Council is hampered with organizational difficulties and there still exists barriers to access health services for children with disabilities. The Committee, therefore, recommends the State Party to continue its efforts to address the need of children with disability through the proper implementation of its policies and by establishing orthopedic services and where services are available

to ensure that the services are more accessible and flexible. Moreover, the Committee encourages the State Party to review existing programs essential for children with disability, and to improve their coverage, effectiveness and efficiency.

Health and Health Services

32. The Committee applauds the State Party for adopting a Primary Health Care approach in providing health services. Furthermore, the Committee appreciates the State Party for the measures it has taken including the development of Emergency Obstetric and Newborn Care Guide; launch of annual National Immunization Campaigns; the development of National Food and Nutrition Strategy; National Assessment, Counseling and Support Program; and for adopting Adolescent Friendly Health Services approach.
33. However, the Committee is concerned by the tenaciously high rate of child and maternal mortality in Namibia that is caused by poor access to antenatal and postnatal care, disparity in health service provisions in urban and rural areas, poor nutrition, and the impact of HIV/AIDS pandemic. The Committee, therefore, recommends the State Party to implement its Child Survival Strategy by addressing gaps in the health sector and to improve the provision and quality of health services.
34. The Committee also recommends the State Party to promote exclusive breast feeding at least for the first six months and to strictly regulate the promotion of supplementary foods; to provide complementary foods and feeding programs in schools, and to collaborate with CSOs and the international community for financial and technical support.

G. Education, leisure and cultural activities

35. While appreciating the efforts of the State Party to provide early childhood care and education (ECD), the Committee is concerned about the inaccessibility of the service to all children, the running of ECD centers by the private sector with high fee charge, and of its poor quality. Therefore, the Committee urges the State Party to establish public ECD centers in urban and rural areas to provide quality and equitable ECD services to all children.
36. The Committee commends the State Party for stipulating free and compulsory primary education under the Education Act 16 of 2001. However, the Committee considers the permission for schools to raise a School Development Fund (SDF) from parents under the same Act as an exception of the rule for free primary education. Moreover, the Committee is concerned by the fact that the Government is failing to provide funds for

schools on behalf of children who are exempted of the SDF. Therefore, the Committee recommends the Government of Namibia to continue improving access to of education to all children by removing barriers such as the SDF. The Committee also recommends the State Party to guarantee access to education for pregnant girls.

37. The Committee notes, with great concern, the existence of high rates of dropouts and non-completion of secondary education. The Committee, therefore, recommends the State Party to take the necessary actions such as establishing pre-school centers; setting in place flexible schooling hours; making the mother tongue the medium of instruction; providing free text books, sanitary materials and school feeding program; arranging for scholarship programs; undertaking medical interventions in schools; introducing adult education programs in all schools; and providing for alternative forms of education like vocational trainings in collaboration with CSOs in order to address the root causes of drop outs and non-completion.
38. Appreciating the efforts of the State Party to ensure inclusive education for children with disability, the Committee recommends the Government of Namibia to continue strengthening its efforts and to ensure that the manner and form of inclusive education is dictated by the individual educational needs of every child. The Committee also urges the Government of Namibia to cater for the children's specific needs by re-evaluating its education curriculum to address challenges faced by children with disability. In this regard, the Committee recommends the State Party to incorporate special needs education in the training manuals of teachers and other personnel involved in the education system and to provide and improve basic infrastructures suitable to children with disability.

H. Special Protection Measures

Refugee Children

39. The Committee recommends the State Party in collaboration with CSOs to ensure access to basic services for all refugee and asylum seeking children without discrimination and to continue its effort to provide for durable solutions. Furthermore, the Committee recommends the State Party to establish a strong and functional legislative and institutional framework to ensure that refugee and asylum seeking children did not become to be stateless.

Children in conflict with the law

40. The Committee is highly concerned by the fact that the age of criminal responsibility for children is set at the age of 7 years. The Committee is also concerned about the limited number of child friendly courts in the country. The Committee, therefore, recommends

the Government of Namibia to raise the minimum age of criminal responsibility to the international standard, which is set at the age of 12 and above. To this effect, the Committee urges the State Party to review the Child Justice Bill and to promulgate the amended Bill promptly. Further, the Committee recommends the Government of Namibia to strengthen the existing child friendly courts through training of its officials on child rights issues and recruiting psychologists and social workers and to establish more child friendly courts across the country.

41. Commending the State Party for providing separate detention quarters for juvenile offenders under the Correctional Services Act, the Committee recommends the Government of Namibia to introduce diversion programs in the criminal justice system and to establish rehabilitation centers for children in conflict with the law. In its effort to improve the criminal justice system for children, the Committee recommends the State Party to refer to the Guidelines on Action for Children in the Justice System in Africa.

Children of Imprisoned Mothers and care givers

42. While appreciating the efforts of the State Party to respect the rights of children of incarcerated mothers, the Committee recommends the State Party to make reference and use as a guideline the Committee's General Comment on article 30 of the African Children's Charter in its future actions.

Economic Exploitation and Child labor

43. The Committee commends the State Party for making a moderate advancement in its effort to eliminate the worst forms of child labor in the year 2011. However, the Committee is concerned of the gaps that exist in relation to child prostitution, the use of children for illicit activities, children working in domestic service, and children engaged in dangerous forms of agricultural activities. Therefore, the Committee recommends the Government of Namibia to ensure that the minimum age of child labor and hazardous works is respected; to strengthen its inspection mechanisms; prosecute individuals and companies that engage children in worst forms of child labor; introduce corporate social responsibility for the private sector; and review existing programs aimed at addressing child labor and economic exploitation of children.

Sale, Trafficking and abduction

44. The Committee is highly concerned by the lack of reliable data on the situation of child trafficking and sale in the State Party despite the fact that the region where Namibia is located is identified to be a transit for human trafficking. Therefore, the Committee recommends the Government of Namibia to urgently gather data on the matter and to take measures based on its findings in collaboration with neighboring countries.

Harmful traditional practices

45. Commending the State Party for launching a National Campaign against Child Marriage and other Harmful Practices relating to Sexual Exploitation, the Committee recommends the Government of Namibia to continue its efforts to fully eliminate child marriage and other harmful traditional practices that affect the wellbeing of children by partnering with traditional and religious leaders, parents, and schools.

I. Responsibility of the child

46. The Committee appreciates the State Party for incorporating the responsibility of the child under the recently adopted Child protection and Care Bill. With this, the Committee calls upon the State Party to continue its efforts in promoting the responsibility of the child as it contributes towards creating a forum of participation for children to be involved in matters that affect their interests. Further, the Committee recommends the Government of Namibia to ensure that the responsibility of the child does not lead to violation of rights of children enshrined in the Charter.

J. Conclusion

47. The African Committee of Experts on the Rights and Welfare of the Child appreciates with satisfaction the efforts by the Government of Namibia to promote and respect the rights of children and aspires to the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up Mission to ascertain the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State Party to submit its combined third and fourth periodic reports, which the Committee considers as the first periodic report, by August 2018 and to include in it information on the implementation of the present concluding observations and recommendations. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Republic of Namibia, the assurances of its highest consideration.