Committee on the Elimination of Discrimination against Women

Concluding observations on the combined fourth and fifth periodic reports of Namibia*

1. The Committee considered the combined fourth and fifth periodic reports of Namibia (CEDAW/C/NAM/4-5) at its 1321st and 1322nd meetings, on 16 July 2015 (see CEDAW/C/SR.1321 and 1322). The Committee’s list of issues and questions are contained in CEDAW/C/NAM/Q/4-5 and the responses of Namibia are contained in CEDAW/C/NAM/Q/4-5/Add.1.

A. Introduction

2. The Committee appreciates that the State party submitted its combined fourth and fifth periodic reports. It also appreciates the State party’s written replies to the list of issues and questions raised by the pre-session working group of the Committee. It welcomes the oral presentation of the delegation and the further clarification provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party’s delegation, which was headed by the Minister of Gender Equality and Child Welfare, Ms. Doreen Sioka. The delegation included representatives from the Ministry of Health and Social Services, the Ministry of Education, Arts and Culture, the Ministry of International Relations and Cooperation, and the Permanent Mission of Namibia to the United Nations Office at Geneva.

B. Positive Aspects

4. The Committee welcomes the progress achieved since the ratification of the Convention, in particular the adoption of the following legislative measures:

   (a) The Child Care and Protection Act in 2015, which has provisions on the trafficking of children including girls and the minimum age of marriage; and

   (b) The Prevention of Organised Crime Act of 2004 (entered into force in May 2009), which has been used to combat trafficking in human beings including women and girls.

* Adopted by the Committee at its sixty-first session, meeting from 6 to 24 July 2015.
5. The Committee welcomes the State party’s efforts in improving its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of the following:

   (a) The National Gender Policy (2010-2020);
   (b) The National Gender Plan of Action (2010-2020);
   (c) The Gender Responsive Budget Guidelines approved by Cabinet in 2014; and
   (d) The Education and Training Sector Improvement Programme (2006-2020), which seeks to enhance education from early childhood development to lifelong training;

6. The Committee welcomes the State party’s accession to the following international instruments:

   (a) The Convention on the Rights of Persons with Disabilities in 2007; and

C. Principle areas of concern and recommendations

Parliament

7. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with Parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.

Visibility of the Convention, Optional Protocol and the Committee’s general recommendations

8. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, para. 12) and reiterates its concern that the provisions of the Convention, the Optional Protocol and the general recommendations are not sufficiently known in the State party, including by judges, lawyers and prosecutors and that there has only been one case where the provisions of the Convention have been referred to by domestic courts.

9. The Committee recommends that the State party:

   (a) Intensify efforts to disseminate information about the Convention, the procedures under the Optional Protocol and the Committee’s general recommendations, as well as to conduct capacity building programmes for judges, prosecutors and lawyers that cover all relevant aspects of the Convention and the Optional Protocol; and

   (b) Consider adopting a national action plan on the implementation of the Committee’s present concluding observations with clear targets and indicators.

Definition of discrimination and legislative framework

10. The Committee notes that article 10 of the Constitution of the State party provides that all persons are equal before the law and prohibits sex-based discrimination. However, the Committee is concerned that the article provides a closed list of prohibited grounds, which does not encompass discrimination based on marital and HIV status. The Committee further notes with concern that a number of draft laws that impact on the enjoyment of women’s rights such as the Marriage bill, the Recognition of Customary Marriages bill, the
Procurement bill, the Marital Property bill, the Divorce bill and the Interstate Inheritance bill are still pending and there is no specific timeframe for their adoption.

11. The Committee calls upon the State party to:

   (a) Adopt a comprehensive legal definition of discrimination in line with article 1 of the Convention, covering all prohibited grounds of discrimination, including marital and other status, by either amending article 10 of the Constitution or by adopting other appropriate national legislation; and

   (b) Urgently adopt draft laws which are pending such as the Marriage bill, the Recognition of Customary Marriages bill, the Procurement bill, the Marital Property bill, the Divorce bill and the Interstate Inheritance bill.

Legal status of the Convention and harmonisation of laws

12. The Committee notes that the State party has a pluralistic legal system where customary and statutory law are both applicable and that section 66 (1) of the Constitution provides that customary law is only valid to the extent to which it does not conflict with the Constitution or any other statutory law. The Committee is, however, concerned that certain elements of customary law are not in compliance with the Convention.

13. The Committee recommends that the State party ensure that the Ministry of Gender Equality and Child Welfare in conjunction with the Law Reform and Development Commission conduct a thorough gender analysis of all laws in the State party in order to identify all customary laws that are in conflict with the Convention to harmonise them with statutory laws and the Convention.

Access to justice and legal complaint mechanisms

14. The Committee notes that the Legal Aid Act No. 29 of 1990 as amended by Act No. 17 of 2000 provides for a legal aid scheme in the State party. However, the Committee is concerned that notwithstanding the existence of a legal aid scheme, which is based on a means and merit test, women’s access to justice, particularly in civil cases including divorce and in cases of gender-based violence, continues to be limited partly due to reported cuts to the legal aid fund.

15. The Committee recommends that the State party ensure that adequate funding is provided to the legal aid fund and that women have effective access to justice in all parts of the State party, particularly women pursuing divorce and gender-based violence cases.

Temporary special measures

16. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, para. 14) and reiterates its concern that notwithstanding the existence of the Affirmative Action (Employment) Act (No. 29 of 1998) and the general provisions on affirmative action under article 23 of the Constitution, temporary special measures are not consistently applied across various areas covered by the Convention, such as participation of women in public life, education and employment, in order to accelerate the achievement of substantive equality of women and men.

17. The Committee calls upon the State party to adopt and fully enforce legislative provisions on temporary special measures to increase women’s participation in public life, education and employment, in accordance with article 4 (1) of the Convention and the Committee’s General Recommendation No. 25 (2004) on temporary special measures, as a necessary strategy to accelerate the achievement of substantive equality of women and men in all areas of the Convention where women are underrepresented or disadvantaged.
Stereotypes and harmful practices

18. The Committee is concerned at the persistence of harmful practices as well as discriminatory stereotypes and deep-rooted patriarchal attitudes regarding the roles and responsibilities of women and men in the family and in society. The Committee is particularly concerned at the lack of data on the extent of harmful practices such as widow inheritance, sexual initiation practices and polygamy. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, paras. 16 and 17) and notes that the State party has not yet conducted a study on the extent of and prevalence of traditional harmful practices as well as on the impact of the implementation of the Traditional Authorities Act (No. 25 of 2000) and the Community Courts Act of 2003 in order to ensure that customs and practices that are harmful to women are discontinued.

19. The Committee urges the State party to:

(a) Expand public education programmes on the negative impact of discriminatory stereotypes on women’s enjoyment of their rights, in particular in rural areas, targeting traditional leaders who are the custodians of customary values in the State party;

(b) Cooperate with media to educate the general public and raise awareness about existing sex-based stereotypes that persist at all levels of society, with a view to eliminating them;

(c) Conduct national studies with a view to establishing the extent of and prevalence of the problem of harmful practices such as widow inheritance, sexual initiation practices, polygamy, and the impact that the implementation of the Traditional Authorities Act (No. 25 of 2000) and the Community Courts Act of 2003 have on the enjoyment of women’s rights; and

(d) Regularly monitor and review the measures taken to eliminate gender stereotypes and harmful practices in order to assess their impact with a view to introducing concrete measures aimed at eliminating them.

Violence against women

20. The Committee notes the State party’s legislative and policy measures to combat violence against women such as the enforcement of the Combating of Domestic Violence Act (No. 4 of 2003) and the adoption of the National Plan of Action on Gender Based Violence (2012-2016). However, the Committee is concerned at the high prevalence of violence against women and girls such as rape and murder committed by intimate partners. The Committee is also concerned at the low rate of prosecution of perpetrators of violence against women and the frequent withdrawal of cases by women victims of violence. It is further concerned that notwithstanding the State party’s efforts to establish shelters in the State party, they remain inadequate.

21. Recalling its General Recommendation No. 19 (1992) on violence against women, the Committee urges the State party to:

(a) Ensure that all cases of violence against women and girls are thoroughly and effectively investigated and that perpetrators are prosecuted ex officio and adequately punished;

(b) Identify the root causes for the withdrawal of complaints about violence against women by victims and introduce effective measures to address such causes;

(c) Expedite the development of the proposed national gender statistical system, which will have indicators and targets for all national programmes on gender, and ensure that the National Database on Gender Based Violence has up-to-date statistical data on cases focusing on all forms of violence against women including
domestic violence, which should be disaggregated by age, type of offence and the relationship of perpetrators with the victims; and

(d) Undertake a needs assessment to establish the demand for shelters by women victims of violence considering the magnitude of the problem of violence against women in the State party; and ensure that adequate shelters are accessible to women and girls who are victims of violence in all parts of the State party and that all shelters are sufficiently resourced.

22. The Committee commends the State party for establishing a High-Level Strategic Inter-Ministerial Committee on Domestic Violence and Violence in General in 2008. However, it is concerned that most of the proposals made by the State party’s cabinet at a special meeting held on 20 February 2014, such as introducing a witness protection programme for gender-based violence cases have, not been implemented. The Committee is further concerned that the Correctional Services Act (No. 9 of 2012), the Criminal Procedure Act (sections 60, 61 and 62), the Combating of Rape Act No. 8 of 2000 (section 3), which have a bearing on efforts to curb violence against women in the State party have not been amended to remove legal impediments in the fight against violence against women as observed by Cabinet.

23. The Committee recommends that the State party urgently implement the proposals adopted by the State party’s Cabinet on 20 February 2014, including:

(a) Introducing a comprehensive witness protection programme in order to protect witnesses who testify against persons accused of violence against women, including domestic violence; and

(b) Amending the Correctional Services Act (No. 9 of 2012), the Criminal Procedure Act (sections 60, 61 and 62), and the Combating of Rape Act No. 8 of 2000 (section 3) with a view to removing all legal impediments in the fight against violence against women.

Trafficking and exploitation of prostitution

24. The Committee welcomes the adoption of the Child Care and Protection Act of 2015, which contains a chapter on combating trafficking in children, the inclusion of human trafficking among the 12 areas of focus in the revised National Gender Policy, the use of the Prevention of Organised Crime Act of 2004 to combat trafficking in human beings as well as the first criminal conviction in 2015 involving a case of human trafficking. However, the Committee is concerned that the State party remains a source and destination country of trafficking in human beings, in particular women and girls, mainly for purposes of forced labour and sexual exploitation. The Committee is also concerned at the lack of up-to-date data on the extent of trafficking in women and girls since the State party conducted national baseline study on trafficking in human beings in 2009.

25. The Committee recommends that the State party:

(a) Elaborate and enact a comprehensive anti-trafficking legislation in line with international norms and standards;

(b) Undertake a comprehensive study to collect data on the extent and forms of trafficking in women and girls, which should be disaggregated by age, region or country of origin;

(c) Intensify efforts to address the root causes of trafficking in women and girls and to ensure the rehabilitation and social integration of victims, including by providing them with access to shelters, legal, medical and psychosocial assistance;
(d) Intensify awareness-raising efforts aimed at promoting reporting of trafficking crimes and early detection of women and girls who are victims of trafficking as well as their referral to appropriate services;

(e) Intensify efforts aimed at bilateral, regional and international cooperation to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers, particularly with neighbouring States such as Angola, Zambia, Botswana and South Africa and other relevant States in the Southern Africa Development Community (SADC); and

(f) Allocate adequate resources for the effective running of shelters in the State party.

Participation in political and public life

26. The Committee commends the State party for its achievements in attaining 47% representation of women in Parliament during the last presidential and parliamentary elections held in 2014. However, the Committee is concerned that these achievements are based on voluntary commitments of political parties to increase the participation of women in politics and that proposals to amend the Electoral Law in order to have more prescriptive measures to accelerate the participation of women in political life, were rejected. The Committee is particularly concerned at the low representation of women in the judiciary, Ministerial positions, senior positions in the diplomatic service, and at regional and local levels of government.

27. The Committee recommends that the State party introduce temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee’s General Recommendation No. 25 (2004) on temporary special measures and General Recommendation No. 23 (1997) on women in political and public life, such as a gender parity system for appointments and accelerated recruitment of women in senior positions, in order to accelerate women’s full and equal participation in elected and appointed bodies, including the judiciary, Ministerial positions, senior positions in the diplomatic service, and at regional and local levels of government. Furthermore, the State party should consider revising its Electoral Law by adopting more prescriptive temporary special measures in order to secure the gains achieved in the representation of women in Parliament.

Nationality

28. The Committee commends the State party for its efforts in ensuring the registration of children upon birth since the launch of a pilot project on birth registration in 2009. The Committee notes that birth registration by mothers in their maiden names when the father of the child is absent is a culturally sensitive matter in the State party. However, the Committee is concerned that the requirement that both parents be present during birth registration is an obstacle to the timely registration of children in cases where one of the parents, usually the male parent, is absent.

29. The Committee recommends that the State party:

   (a) Intensify its efforts and provide mechanisms to ensure timely birth registration in all parts of the State party; and

   (b) Consider revising its policy on birth registration by permitting the registration of a child on the application of a single parent and prescribing a period during which the absent parent can challenge the registration of the child and pursue de-registration, where appropriate.
Education

30. The Committee welcomes the revision of the Teenage Pregnancy Policy of 2009 on the prevention and management of pregnancy and the provision of life skills as a subject in schools which, inter alia, focuses on the dangers and effects of teenage pregnancies. However, the Committee is concerned at the high rates of pregnancy resulting in drop out of girls from school, particularly in Kavango and Kunene regions. It is also concerned that girls routinely avoid engineering courses. The Committee is further concerned about the lack of appropriate measures to enforce the law which prohibits corporal punishment and prevent its use in all settings, particularly in schools.

31. The Committee recommends that the State party:

(a) Encourage girls and young women to choose non-traditional fields of study and professions, including through the adoption of temporary special measures, and implement programmes aimed at counselling girls on the full range of educational choices;

(b) Intensify efforts to reduce school drop-out among girls by facilitating re-entry into school by young mothers after giving birth, particularly in Kavango and Kunene regions;

(c) Intensify the provision of the “life skills” subject and ensure that age-appropriate education on sexual and reproductive health and rights is systematically integrated into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviours; and

(d) Intensify law enforcement efforts to curb corporal punishment with a view to eliminating its use in all settings, particularly in schools, and promote the use of non-violent forms of disciplining.

Employment

32. The Committee is concerned about the high rates of unemployment among women in the State party. It also notes with concern the continued occupational segregation between women and men in the labour market and at the low representation of women in managerial positions in the private sector. The Committee is also concerned that notwithstanding the concentration of women in domestic work in private households, it has not ratified ILO Convention No. 189 concerning decent work for domestic workers of 2011. It is further concerned at the lack of statistical data on cases of sexual harassment in the workplace and measures taken to address it. The Committee is further concerned that the right to maternity leave for the period of 12 weeks is only applicable to certain groups of employees in the formal sector of employment.

33. The Committee recommends that the State party:

(a) Intensify efforts to reduce unemployment among women by promoting the entry of women into the formal economy through, inter alia, the provision of vocational and technical training;

(b) Strengthen efforts aimed at eliminating structural inequalities and occupational segregation, both horizontal and vertical; and to improve the representation of women in managerial positions in the private sector;

(c) Consider ratifying ILO Convention No. 189 concerning decent work for domestic workers of 2011;

(d) Take necessary steps to ensure that the 12 weeks maternity leave is applicable to employees in the informal sector and consider reviewing the 12 weeks period with the view to prolonging it; and
(e) Collect statistical data on the extent of the problem of sex discrimination in the workplace including cases of sexual harassment, and conduct regular labour inspections aimed at enforcing compliance with labour laws and codes of conduct on sexual harassment.

Health

34. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, paras. 24 and 25) and commends the State party for its successful programmes aimed at preventing mother to child transmission of HIV/AIDS. However, the Committee remains concerned at the high prevalence of HIV/AIDS and unsafe abortions, which have contributed to the increase in the maternal mortality ratio in the State party. The Committee is particularly concerned that while abortion is permissible under prescribed grounds such as rape, incest, threat to the health and life of the pregnant woman and foetal malformation as provided by the Abortion and Sterilisation Act of 1975, women still undergo complex and onerous administrative procedures in order to obtain approval for abortion.

35. The Committee calls upon the State party to:

(a) Implement strategies to combat HIV/AIDS, particularly preventive strategies, and to scale-up the provision of free antiretroviral treatment to all women and men living with HIV/AIDS, including pregnant women in order to prevent mother-to-child transmission; and

(b) Step up efforts to reduce the incidence of maternal mortality, including through the provision of safe abortion and post-abortion care services by simplifying the existing complex and onerous administrative procedures that impede women’s access to abortion services.

36. The Committee welcomes the decisions of the High and Supreme Courts of Namibia in the case of LM and Others v Namibia, in which the High Court found that three HIV-positive women were sterilised without their informed consent in violation of their rights under Namibian law. However, the Committee is concerned at the lack of information on the extent of the problem of forced sterilisations of HIV-positive women. It is also concerned at the lack of information on the specific legislative and policy measures taken with regard to sterilization, including the lack of a clear definition of free, prior and informed consent in cases of sterilization in order to guide women and medical practitioners in the State party on the procedure.

37. Recalling its general recommendation No. 24 (1999) on women and health, the Committee urges the State party to:

(a) Adopt legislative and policy measures that clearly define the requirement of free, prior and informed consent with regard to sterilizations, in accordance with relevant international standards, including by prescribing an appropriate reflection period after a woman has been informed about the nature of the sterilization, its permanent consequences, potential risks and available alternatives, and the woman’s expression of her free, prior and informed consent to undergo the procedure; and

(b) Conduct a study on the extent of the problem of forced sterilisations of HIV-positive women and adopt specific measures aimed at providing all victims of forced sterilisations with assistance to access their medical records; and investigate illegal past practices of forced sterilizations, prosecute and adequately punish perpetrators and compensate the victims.
Rural women

38. The Committee notes the State party’s efforts towards poverty eradication in rural areas, including increasing the old age pension for persons aged 60 and above. However, it is concerned at women’s limited access to land and the lack of information on rural women’s access to micro-finance and micro-credit schemes. The Committee is particularly concerned at reports of land grabbing by relatives of the deceased spouse and its impact on women in rural areas.

39. The Committee calls upon the State party to:

(a) Adopt concrete measures aimed at facilitating women’s access to land, particularly in rural areas;

(b) Collect information on and promote rural women’s access to micro-finance and micro-credit at low interest rates, and intensify efforts aimed at ensuring that rural women engage in income-generating activities; and

(c) Intensify efforts aimed at curbing land grabbing, especially as regards women in rural areas, which affect the full enjoyment of the right to property by women.

Marriage and family relations

40. The Committee notes the State party’s efforts to regulate customary marriages by developing a bill on the Recognition of Customary Marriages and to introduce the no-fault divorce regime under the proposed Divorce bill. The Committee nevertheless notes that the Flexible Land Tenure Act of 2012, which partly addresses joint ownership of marital property, is only applicable to persons who are married in community of property. It further notes that women in de facto unions regularly face economic hardship upon dissolution of their relationships.

41. The Committee recalls its General Recommendation No. 29 (2013) on article 16 of the Convention (Economic consequences of marriage, family relations and their dissolution) and calls upon the State party to protect the rights of women in de facto unions and ensure the equal distribution of marital property upon dissolution of marriage.

Optional Protocol and amendment to article 20, paragraph 1, of the Convention

42. The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.

Beijing Declaration and Platform for Action

43. The Committee calls upon the State party to utilize the Beijing Declaration and Platform for Action, in its efforts to implement the provisions of the Convention.

Millennium Development Goals and the post-2015 development framework

44. The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the achievement of the Millennium Development Goals and into the post-2015 development framework.

Dissemination

45. The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations
and recommendations between now and the submission of the next periodic report. The Committee therefore requests the timely dissemination of the concluding observations, in the official language(s) of the State party, to the relevant state institutions at all levels (national, regional, local), in particular to the Government, the ministries, the Parliament, Senate and to the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers’ associations, trade unions, human rights and women’s organisations, universities and research institutions, media, etc. It further recommends that its concluding observations be disseminated in an appropriate form at the local community level, to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the CEDAW Convention, its Optional Protocol and jurisprudence, and the Committee’s General Recommendations to all stakeholders.

Technical Assistance

46. The Committee recommends that the State party consider seeking international assistance and avail itself of technical assistance in the development and implementation of a comprehensive programme aimed at the implementation of the above recommendations as well as the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system.

Ratification of other treaties

47. The Committee notes that the adherence of the State party to the nine major international human rights instruments would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.

Follow-up to concluding observations

48. The Committee requests the State party to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 11 and 15 above.

Preparation of the next report

49. The Committee invites the State party to submit its sixth periodic report in July 2019.

50. The Committee requests the State party to follow the “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents” (HRI/MC/2006/3 and Corr.1).