



**NAMIBIA: A BRIEF ON IMPLEMENTATION OF CRC  
COMMITMENTS FROM ARTICLES 2, 9, 19, 24, 28, 34, 37 AND  
GENERAL COMMENT 4**

*Information for the Committee on the Rights of the Child  
96<sup>th</sup> Pre-Sessional Working Group, September 2023*

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**TABLE OF CONTENTS**

**Introduction** .....1

**Summary of Findings and Recommendations**.....2

- 1. General Principles: Equality and Non-Discrimination (Article 2) .....2
- 2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4) .....2
- 3. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37) .....3

**Detail of Constitutional and Legislative Findings**.....5

- 1. General Principles: Equality and Non-Discrimination (Article 2) .....5
- 2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4) .....6
- 3. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37) .....8

## INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,500 indicators that matter to equality, health, and well-being.

We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 96<sup>th</sup> Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states (150 in the case of detention based on immigration status) using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases that distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Namibia, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Namibia address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Namibia for having provisions in place, we hope the Committee will recommend that Namibia work with stakeholders to overcome any obstacles in implementing these provisions.



## SUMMARY OF FINDINGS AND RECOMMENDATIONS

### 1. General Principles: Equality and Non-Discrimination (Article 2)

Based on our review of full-text national constitutions, Namibia’s constitution grants equality before the law to all persons, and explicitly prohibits discrimination on the basis of race, colour, sex, religion, ethnic origin, and social or economic status. However, some groups guaranteed equality in the Convention are not covered by this constitutional provision, including children facing discrimination based on language, political opinion, foreign national origin, disability, and birth.

#### RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that Namibia amend its constitution to add explicit guarantees of equality and non-discrimination regardless of language, political or other opinion, disability and birth status, consistent with CRC commitments. This could be added to section 10 of the constitution, which already prohibits discrimination on the basis of other CRC-protected groups and statuses.

### 2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Under current Namibian law, most aspects of customary marriages are not explicitly regulated. These include the minimum age of marriage. As a result, girls and boys can potentially marry under customary law at any age, depending on their community’s practices. Moreover, Namibia’s Marriage Act—which governs civil marriages—permits both girls and boys to be married before the age of 18 with governmental permission.



#### **RECOMMENDED CONCLUDING OBSERVATIONS**

We hope the Committee will:

- In its list of issues, ask Namibia: can Namibia provide the Committee with an update on the status of the Recognition of Customary Marriages Bill, as described in paragraph 3.6 of the State Party Report, and whether the bill would prohibit customary marriage before the age of 18 with no exceptions?
  - If the bill is not progressing toward enactment and implementation in the coming months, or if it does not raise the minimum age to contract customary marriage to 18, recommend in its concluding observations that Namibia rapidly pass and implement legislation that regulates customary marriage and establishes 18 years as the minimum age of marriage for girls and boys without exceptions.
- In its list of issues, ask Namibia: how often does the government authorize civil marriages of children under 18, as provided for by the Marriage Act?
  - If government-authorized child marriages occur regularly, recommend in its concluding observations that Namibia eliminate the exceptions for marriage below the age of 18 with ministerial approval.

### 3. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

While Namibia's general immigration legislation allows for the detention of unauthorized migrants, its child protection act places limitations on detention. Children who are accompanied by their families, whether migrant or asylum-seeking, cannot be separated from their family while in detention; children who are unaccompanied, whether migrant or asylum-seeking, can only be detained as a measure of last resort and for the shortest possible time. Unaccompanied children can further never be detained with adults, and unaccompanied asylum-seekers in particular can have an adult of his or her same community designated as a caregiver, to shorten or avoid detention altogether.

These legislative provisions safeguard certain rights for migrant children but leave other rights at risk. In particular, Namibia's guarantee that children will not be separated from their family members while in immigration detention is consistent with children's right to parental care. At the same time, detaining children, even based on migration status, violates their rights to liberty and health, regardless of whether they are accompanied by their families. Numerous countries have demonstrated the feasibility of adopting effective alternatives to detention (ATDs) that protect children's rights more consistently.



### RECOMMENDED CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Namibia: given the valuable legislative steps Namibia has taken to limit detention of unaccompanied minor migrants and asylum-seekers, can Namibia provide critical information on implementation:
  - details on the number of unaccompanied minors who are detained
  - details on the duration of detention among unaccompanied minors
    - If significant numbers of unaccompanied minors are still being detained and/or if their detention commonly exceeds the two or three days that may be necessary for transition to a supportive living situation, recommend in its concluding observations that Namibia prioritize stronger implementation of its legal commitments to only use child detention as a last resort and for extremely brief transitional periods, given detention's severe consequences for child health, development, and wellbeing.
- In its list of issues, ask Namibia: Are any efforts underway to enact and implement alternatives to detention (ATDs) that would provide for family unity without exposing children to the harms of detention?
  - If Namibia is not taking any specific steps to enact ATDs, recommend in its concluding observations that Namibia pass and implement legislation providing for ATDs, thus recognizing and protecting children's rights to both parental care as well as liberty and health .



## DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

### 1. General Principles: Equality and Non-Discrimination (Article 2)

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Article 2.1 of the Convention states that:

*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws, as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in article 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

#### *NAMIBIA'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON MULTIPLE PROTECTED GROUNDS*

Based on our review of full-text national constitutions, Article 10 of Namibia's constitution grants equality before the law to all persons, and explicitly prohibits discrimination on the basis of race, colour, sex, religion, ethnic origin, and social or economic status.



*Constitution of Namibia, as amended to 2014*

*Article 10 Equality and Freedom from Discrimination*

*(1) All persons shall be equal before the law.*

*(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.*

**However, some groups guaranteed equality in the Convention are not covered by this constitutional provision, including children facing discrimination based on language, political opinion, foreign national origin, disability, and birth.**

## 2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

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General Comment No. 4 (2003) states that:

*The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.*

Child marriage has life-long health, educational, and economic consequences, particularly for girls. Married girls are more likely to be victims of domestic abuse, experience pregnancy and childbirth complications due to early childbearing, and drop out of school, all of which affect core rights of the Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, under religious and customary law, and with court or governmental approval. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

### *NAMIBIA’S LEGISLATIVE PROVISIONS: MARRIAGE POSSIBLE AT ANY AGE UNDER CERTAIN CONDITIONS, AND CUSTOMARY MARRIAGE EXCLUDED FROM GENERAL MARRIAGE LEGISLATION*

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Namibia addresses conditions for a valid marriage and rights within marriage through several different pieces of legislation. The Married Persons Equality Act, which governs marital property and rights within marriage, explicitly states that the majority of its provisions do not apply to customary marriages. The Marriage Act, which establishes the minimum ages for marriage, does not address customary marriage but establishes that a “valid marriage” covered by the law must be administered by an authorized





marriage officer. The Child Care and Protection Act refers back to the Marriage Act and further requires that a child “consent” to being married under the age of 18.

**Collectively, these laws leave ambiguity about and a potential exemption for child marriages conducted under customary law. Moreover, even for civil marriages, marriage at any age may be legal if authorized by the relevant minister or their representatives.**

Namibia’s Marriage Act, as referenced in the Child Care and Protection Act, prohibits the marriage of both men and women under the age of 21, but both boys and girls under 18 may marry with government permission.

*Marriage Act, amended to 2022*

*24. Marriage of minors*

*(1) No marriage officer shall solemnize a marriage between parties of whom one or both have not attained the age of 21 years unless the consent to the party or parties which is legally required for the purpose of contracting the marriage has been granted and furnished to him in writing.*

*(...)*

*26. Prohibition of marriage of persons under certain ages*

*(1) No boy or girl under the age of 18 years shall be capable of contracting a valid marriage except with the written permission of the Minister or any staff member in the Public Service authorized thereto by the Minister, which he or she may grant in any particular case in which he or she considers such marriage desirable: Provided that such permission shall not relieve the parties to the proposed marriage from the obligation to comply with all other requirements prescribed by law: Provided further that such permission shall not be necessary if by reason of any such other requirement the consent of a judge or court having jurisdiction in the matter is necessary and has been granted.*

Further, the Married Persons Equality Act appears to exclude customary marriage from general marriage provisions. Paragraph 3.6 and Section 6 of the State Party Report highlight that a Recognition of Customary Marriage Bill is in process and undergoing consultations; as of this writing, we can find no evidence that this bill has passed, and thus this remains an open issue.

*Married Persons Equality Act, as amended to 2022*

*16. Provisions not applicable to marriages by customary law*

*The provisions –*

*(a) regarding the abolition of the marital power and the consequences of that abolition as set out in Part I;*

*(b) regarding marriages in community of property as set out in Part II; and*

*(c) regarding marriages out of community of property as set out in Part IV, do not apply to marriages by customary law.*

### 3. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

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As noted in the 2002 Committee's Report on the Rights of All Children in the Context of International Migration, migrant children may experience heightened vulnerabilities. Particularly, the detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention including the right to liberty (Article 37) and the right to not be separated from their family (Article 9). Children held in detention may also face barriers accessing education (Article 28) and health services (Article 24).

Article 37.b. specifically states:

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

Article 9.1 affirms the right to family unity stating:

1. *States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]*

#### *NAMIBIA'S LEGISLATIVE PROVISIONS: FAMILY UNITY GUARANTEED, BUT DETENTION OF CHILDREN IS PERMITTED*

Based on our review of legislation, regulations and decrees, we find that Namibia's legislation takes some steps towards ensuring the safety of minor migrants and asylum-seekers, although more progress is needed.

Specifically, migrant and asylum-seeking children who are accompanied by family members can still be detained under Namibian law, provided they are not separated from their family while in detention. Although the law importantly protects children's rights not to be separated from their parents, it leaves their rights to liberty and health at risk. Countries have demonstrated the feasibility of enacting and implementing alternatives to detention that respect children's rights to family unity, liberty, and health while still enabling the effective administration of immigration laws. Identifying, enacting, and implementing effective ATDs in Namibia would be an important step toward better protecting accompanied migrant children's rights.



The law provides that children who are unaccompanied, whether migrant or asylum-seeking, can only be detained as a measure of last resort and for the shortest possible time, and they can never be detained with adults. Minor asylum-seekers can have an adult of his or her same community designated as a caregiver, to shorten or avoid detention altogether. In section 12 of the State Party Report, Namibia indicates that the country does not experience cases of unaccompanied asylum-seekers and only has “isolated” cases of migrant children in need of services. Nevertheless, more quantifiable information on how many unaccompanied minor migrants enter Namibia each year, and how long they are detained, would shed light on whether these laws are being adequately implemented.

*Child Care and Protection Act, amended to 2022*

*Definitions*

*1. In this Act, unless the context indicates otherwise -*

*“child” means a person who has not attained the age of 18 years;*

*“unaccompanied foreign child” means a child who is not a citizen or resident of Namibia, including a refugee or migrant child, who has been separated from both parents or other adult family members and is not being cared for by an adult who, by law or custom, is responsible for doing so;*

*Unaccompanied foreign children*

*233. (1) An asylum-seeker may, in the prescribed manner, be recognised as a temporary caregiver for an unaccompanied foreign child to enable such child to stay within a particular refugee community as far as possible.*

*(2) An unaccompanied foreign child may not be repatriated without proper arrangements for his or her reception and care in the receiving country and, if such child is the subject of an order of the children’s court, without the court confirming such repatriation.*

*(...)*

*(5) An unaccompanied foreign child -*

*(a) may not be detained, except as a measure of last resort and for the shortest possible period;*

*(b) may not be detained with adults, unless a family with children are detained, in which case the child may not be separated from his or her family.*

*(6) An unaccompanied foreign child may apply for asylum without assistance, but a social worker must be present when the child is being interviewed by a government official for official purposes.*

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