



REPUBLIC OF NAMIBIA

OMBUDSMAN: NAMIBIA

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16 January 2023

The Secretariat
Human Rights Committee on the
International Covenant on Civil
and Political Rights
GENEVA, SWITZERLAND

Dear Mr. Klettermayer,

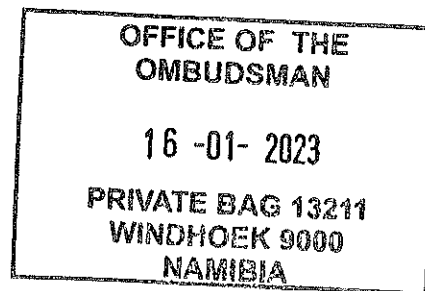
OMBUDSMAN: NAMIBIA: SUBMISSION TO THE HUMAN RIGHTS COMMITTEE

I have pleasure in attaching above submission of my Office.

For any further information my secretary can be contacted at ivanwyk@ombudsman.org.na.

Yours sincerely


ADY BASILIUS DYAKUGHA
OMBUDSMAN





THE OMBUDSMAN: NAMIBIA (NHRI)

CONTRIBUTIONS FROM OMBUDSMAN, NAMIBIA FOR THE LIST OF ISSUES RELATING TO CIVIL AND POLITICAL RIGHTS WITHIN THE COUNTRY AS PER THE ATTACHED THIRD PERIODIC REPORT SUBMITTED BY NAMIBIA UNDER ARTICLE 40 OF THE COVENANT

Submission to the Human Rights Committee

Submitted January 2023

INTRODUCTION

Ombudsman: Namibia is established under Chapter 10 of the Namibian Constitution; and the enabling legislation is the Ombudsman Act, No 7 of 1990. It is a multifunctional office, or a classical Ombudsman with additional mandates. The mandates are receiving and investigating complaints relating to maladministration; violation of human rights and fundamental freedoms, misappropriation of public monies and misuse of Government property by public officials and the protection of the environment. The office received a status “A” accreditation from the Global Alliance of National Human Rights Institutions (GANHRI) in 2006 and retains its status “A” accreditation during the re-accreditation process in 2011. Its application for re-accreditation in November 2016 was deferred; and in November 2018 it was re-accredited.¹

The Ombudsman commends the government for the enormous effort it has made to improve the human rights situation in Namibia. However, more needs to be done in the areas of inequality and poverty particularly the marginalized community to ensure that the rights and freedoms guaranteed in our Constitution and the international instruments, ratified by Namibia, become a reality for all Namibians. This submission will emphasize key human rights issues that need to be addressed to give effect to constitutional guarantees and improve the human rights situation of the citizens.

As the NHRI the Ombudsman requests that the following be included in the list of issues for Namibia:

C. Principal Matters of Concern and Recommendations as contained in the concluding observations on the second report of Namibia-

ad 7 and 8

1. what measures does the State party intend to take to expedite the passing of the Ombudsman Bill (subject to the approval of policy issues by the Minister of Justice), being

¹ See: Website: www.ombudsman.org.na

guided by the fact that the Ombudsman's A- status re-accreditation in terms of the Paris Principles set for review in 2023;

Ad 9 and 10

1. what are the measures taken by the state party to extend the definition of a domestic relationships to include same sex partnerships in current review process of the Combating of Domestic Violence Act;
2. The Law Reform and Development Commission (LRDC) have submitted a comprehensive report on the abolishment of the common law crime of Sodomy to the Minister of Justice in November 2020. It was also widely reported in the local media that the Minister of Justice did present the report to Cabinet. What was the Cabinet decision and when will the Minister of Justice present the report to Parliament to abolish the crime?

Ad 33 – 36

1. various holding cells have been closed since the previous reporting cycle, which has placed strain on the operating pre-trial holding cells, what measures have the State party taken to address the over-crowding in the pre-trial holding cells;
2. although the Namibian Correctional Facility has made great strides towards attaining international minimum standards; what measure are the state party taking to either bring the pre-trial detention cells on par with the correctional facilities;

INTERNATIONAL TREATY OBLIGATIONS

1. Ratification

Namibia has ratified nearly all core international and regional human rights instruments. However, government should be encouraged to ratify the outstanding instruments and to comply fully with its obligations under these instruments.

Namibia has ratified the Convention against Torture (CAT) but still needs to ratify the Optional Protocol to the Convention against Torture (OPCAT). In terms of CAT and OPCAT, Namibia needs to take legislative and other measures to criminalize torture and establish a National

Preventative Mechanism. The Ombudsman calls on Government to ratify OPCAT and to establish a national preventative mechanism.

DOMESTIC HUMAN RIGHTS CONCERNS

Acting National Preventative Mechanism

While government has not yet ratified OPCAT and has not designated a national preventative mechanism, the Ombudsman conducts periodic visits to places of detention in order to receive complaints from inmates, inspect facilities and prevent torture and other cruel, inhuman or degrading treatment or punishment. The Ombudsman calls on Government to strengthen the capacity of the Ombudsman in order to conduct visits to places of detention more often.²

Places of Detention

Government must be commended for the improvements at and upgrading of existing correctional facilities and police detention cells. However a serious concern is still the conditions under which detainees are kept and fed in some detention cells at police stations. The conditions do not comply with international standards and most cells are still overcrowded. The Ombudsman calls on government to establish up to date standards for these places of detention and to expedite the building of remand prisons for trial awaiting inmates in identified towns.

Legislative Challenges

The Prohibition of Racial Discrimination Act, 1991 (Act No 26 of 1991) and its 1998 amendment has fallen in disrepute and disuse because it makes it extremely difficult for the prosecution to prosecute and almost impossible to obtain a conviction in a court of law for contravening section 11.

It is clear that the current legal framework does not provide sufficient protection of a person's right to equality, dignity and equal access to our courts. The formal adversarial and potentially intimidating court proceedings that prevail in our courts may act as a barrier to those seeking justice.

The Namibian Constitution prohibits discrimination on only a limited number of grounds; however it is not prudent to amend the Constitution to include other prohibited grounds. The Ombudsman, therefore initiated the Combating of Discrimination, Discriminatory Harassment and Hate Speech Bill, which has the following features:

²See: Website: www.ombudsman.org.na

- It prohibits unfair discrimination, harassment and hate speech on the basis of prohibited grounds, which includes sexual orientation, age, disability and others
- It defines discriminatory harassment and hate speech
- It establishes equality courts to adjudicate breaches of the prohibitions
- It promotes equality

The Bill has been submitted to Government for consideration in September 2021. The Bill has since been referred to the LRDC for further handling. However the LRDC (an independent panel of experts from the government established in 1992 responsible for review, reform and development of the law) is currently defunct as no commissioners have been appointed as required by its enabling legislation. The Combating of Discrimination, Discriminatory Harassment and Hate Speech Bill is being held back as a result.

The Ombudsman calls on Government to move swiftly towards the enactment of this Bill as well as the long outstanding Child Justice Bill, the Divorce Bill, Recognition of Customary Marriage Bill, Intestate Succession Bill, Small Claims Court Bill, Prevention of Torture Bill, Uniform Matrimonial Property Bill and Ombudsman Bill.

Conclusion

Namibia has made enormous strides in addressing the inequities of the past, achieved national reconciliation, fostered peace and a common loyalty to a single state. However there always have been and will continue to be challenges for the Government to realize civil and political rights. A concerted effort by Government, the Ombudsman, civil society and the private sector will assist in addressing these challenges.

My Office has no objection that his information be made public.