



OMBUDSMAN OF NAMIBIA
(National Human Rights Institution)

**CONTRIBUTIONS FROM OMBUDSMAN NAMIBIA FOR THE MAIN REVIEW
RELATING TO IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON
THE ELIMINATION OF ALL FORMS
OF RACIAL DISCRIMINATION**

Submission to the Committee on the Elimination of Racial Discrimination (CERD)

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I. INTRODUCTION

1. The Ombudsman of Namibia is established under Chapter 10 of the Namibian Constitution; and the enabling legislation is the Ombudsman Act, (Act No 7 of 1990). It is a multifunctional/hybrid 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
2. The Ombudsman commends the Government for the enormous effort it has made relating to the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) for the past years. However, more needs to be done in the areas of inequality and poverty particularly for the marginalized (Indigenous) communities to ensure that the rights and freedoms guaranteed in the Namibian Constitution and the international instruments, ratified by Namibia, become a reality for all Namibians. This submission will emphasize key human rights issues that the Government need to address to give effect to the constitutional provisions that guarantees non-discrimination and equality of citizens.

II. LIST OF THEMES

As the NHRI, the Ombudsman submits the following information in relation to the list of themes for Namibia:

A. Situation of Tribal and Indigenous People including women

3. While there is no law or institutional discrimination that prohibits or limits the participation of any member from the minority ethnic groups in the political process, the reality on the ground

¹ See: Website: www.ombudsman.org.na

is that the marginalized communities, particularly the San people, Namibia's earliest known inhabitants, are underrepresented in all political structures of Government. There is only one Deputy Minister, who happens to be the Deputy Minister for Marginalized Affairs. There is no evidence that efforts are made by all the political parties to encourage these communities to participate in party politics so that they can also stand and campaign to occupy political positions as members of marginalized communities.

4. The San People are the most marginalized communities in Namibia, not only are they excluded from political participation but also from social and economic activities. As they are predominantly resided in far remote areas where the roads are very difficult to travel, goods and services become very scarce and very basic and in many situations zero. For Example; well equipped clinics with qualified medical personnel, and schools with qualified teachers to teach their mother language are not available in many of the areas they live. The unequal access to health care leaves the San community vulnerable to tuberculosis and other ailments/diseases. The problem is exacerbated because of a lack of San-speaking health-care providers. We recommend that the relevant laws should be amended, in order to compel all political parties including the ruling party SWAPO to allocate a quota of seats in all political structures to accommodate the marginalized communities in political positions that make important decisions that affect their communities.

5. By law all traditional communities are allowed to participate without any discrimination in decisions making that is affecting their lands, cultures, and customs or traditions. Nevertheless, due to their nomadic lifestyle, the San people are unable to exercise these rights effectively because of the minimal access to education, limited economic opportunities, and their relative remote areas. Some San people reportedly have difficulty in obtaining national identification cards because they lack birth certificates or other documents to prove that they are Namibians. This creates exclusion because national identification cards are pre-requisite to all citizens to access Government social grants and other programs including to register to vote in any elections. A lack of access to police services, prosecutors, and courts prevents San women from reporting and seeking protection from Gender Based Violence (GBV).

6. In some areas, their indigenous lands are clearly demarcated but poorly managed because in some instances some San communities their traditional leaders are not recognized by Government. Many San community members (who are primarily hunter gatherers) live on conservancy (communal) lands but are unable to prevent members of the dominant ethnic groups with their cattle and small livestock from using and exploiting their lands. In some areas the Government officials fail to remove members from other dominant groups away from San people's lands.

III. THE CONVENTION IN DOMESTIC LAW AND THE INSTITUTIONAL AND POLICY FRAMEWORK FOR ITS IMPLEMENTATION (ARTICLES 1, 2, 4, 6 & 7)

7. 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 prosecutorial authority to prosecute and almost impossible to obtain a conviction in a court of law for contravening section 11.
8. 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.
9. Article 10 of the Namibian Constitution prohibits discrimination of any sort; however, the Ombudsman initiated the Combating of Discrimination, Discriminatory Harassment and Hate Speech Bill, to expressly address the following:
 - It prohibits unfair discrimination, harassment and hate speech on the basis of prohibited grounds, which includes, **race**, sexual orientation, age, disability and others.
 - It **defines discrimination** (on listed grounds including race), discriminatory harassment and **hate speech**.

- It establishes equality courts to adjudicate breaches of the prohibitions.
 - It promotes equality.
10. The Bill was submitted to the Government for consideration in September 2021. The Bill has since been referred to the LRDC for further handling. However, the Law Reform and Development Committee (LRDC), -a statutory body established in 1992 and responsible for review, reform and development of the law- is currently defunct as no commissioners have been appointed as required by its enabling legislation since 2021. The Combating of Discrimination, Discriminatory Harassment and Hate Speech Bill is being held back as a result.
11. The Ombudsman has written letters to the responsible Minister and calls on Government to move swiftly towards the enactment of this Bill as well as the Recognition of Customary Marriage Bill, Intestate Succession Bill, Small Claims Court Bill, Prevention of Torture Bill, Uniform Matrimonial Property Bill and the coming into force of the Repeal of Obsolete Laws Act of 2018.

A. Ombudsman Bill

12. The Ombudsman’s Office is currently accredited with “A” status by the Sub-Committee on Accreditation (SCA) of Global Alliance for National Human Rights Institutions (GANHRI). During the last review the recommendations of the SCA were to seek amendments to the current law aimed at: expanding the mandate of the Ombudsman to explicitly provide for the mandate to promote and protect all human rights, a transparent selection and appointment process for the Ombudsman position, adequate funding and financial autonomy, a fixed term of office for the Ombudsman and the power to recruit own staff. To this end a new bill was drafted which is expected to be presented to parliament during 2023.

B. Information on complaints relating to racial discrimination

13. The Ombudsman received twenty-six (26) complaints of racial discrimination from 2017 to 2020. Thirteen (13) of the complaints were against the Government institutions and fourteen (13) against private individuals and entities. These include:
- The Ovazemba community complaining that Government is not providing mother tongue teaching at primary education to children from the community like they do with other ethnic groups, tribalism in appointing members of certain tribal groups to the exclusion of the minority groups;
 - Provision of water at tariffs that minority groups cannot afford due to the systemic poverty of these groups due to Government policies of exclusion;
 - The Namibian Police Force has a tendency of stopping and searching vehicles of non-white Namibians, but not of white Namibians;
 - Correctional Services refusing a German national to serve his sentences in their country of origin, while they allow black people from African countries to do so;
 - The Government has unlawfully deprived the San people at Ouholama-Eenhana settlement of their traditional land;
 - That Kongola Constituency officers of are discriminating against non-Oshiwambo speaking inhabitants with regard to compensation for property;
 - There are allegations of discrimination, tribalism by Government in the deployment or posting of diplomats to Namibian missions around the world, because predominantly (98%) are Awaambo people; and
 - Discrimination against pensioners in State care institutions who in relying on pre-independence regulations, which are still in force and are based on racial classification, do not pay old-age pensions to persons detained in Correctional facilities.
14. Complaints were received at the Ombudsman's office against various private institutions and individuals over the years alleging discrimination and the incitement of hate (and hate speech) against black people, by calling them derogatory names; and not promoting/recruiting them based on racial discrimination; commercial banks is allegedly charging exorbitant fees to white Europeans compared to Namibians; refusal of services

by a doctor based on racial discrimination; racial discrimination at private schools, particularly the German private school; maltreatment of black workers on farms; and discriminatory harassment by a white neighbourhood watch against a black car guard.

C. Other Special Measures

15. The status of the adoption and implementation of the Whitepaper on Indigenous Peoples developed by the Office of the Ombudsman is the following.

The Government, in this case the Cabinet, has not yet adopted the Whitepaper, the document constitutes policy guidance for promoting and protecting the rights of indigenous peoples and ensuring their inclusion in a strong, resilient and tolerant Namibian House. It includes the following ten objectives for, as identified in consultation with, indigenous peoples:

- Objective 1: Recognizing indigenous peoples and ensuring their rights and well-being through the implementation of sound legislation and policies
- Objective 2: Strengthening institutional frameworks and improving coordination
- Objective 3: Ensuring effective consultation, participation and representation
- Objective 4: Improving access to land and ensuring secure land tenure
- Objective 5: Ensuring equal access to quality education for indigenous peoples and protecting and promoting indigenous languages
- Objective 6: Promoting respect for cultures and traditional knowledge of indigenous peoples and eliminating discrimination
- Objective 7: Improving health outcomes for indigenous peoples
- Objective 8: Improving food security and access to employment and sustainable livelihoods
- Objective 9: Advancing gender equality for indigenous peoples
- Objective 10: Improving monitoring and evaluation

16. The White Paper further sets out strategies for achieving each objective. The objectives and the strategies, in accordance with the Constitution of the Republic of Namibia, aim to

ensure that indigenous peoples and their communities will be better situated to participate in decisions and activities regarding their well-being and development, while ensuring the persistence of this country's rich cultural diversity.

17. The Ombudsman's office calls for the speedy adoption of the document by Cabinet without any further delays.

IV. CONCLUSION

18. 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 Social, Economic, and Cultural rights. A concerted effort by Government is required and, the Ombudsman, civil society and the private sector will assist to remind the Government to address these challenges.

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