



The Ombudsman: Namibia (NHRI) Submission to the Universal Periodic Review Mechanism

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Introduction

The Ombudsman: Namibia was established under Chapter 10 of the Namibian Constitution and the Ombudsman Act, No 7 of 1990. It is a hybrid office, that is classical Ombudsman with additional mandates. The mandates are maladministration, human rights and protection of the environment. The Ombudsman: Namibia received 'A' status accreditation from the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights in April 2006.

Given our oppressive past, the Ombudsman must credit the government for the enormous effort it has made to improve the human rights situation in Namibia. However, it will take a combined effort by government and citizens, an unwavering commitment and enormous political will to ensure that the rights and freedoms guaranteed in our Constitution and the international instruments, ratified by Namibia, become a reality for every citizen. The submission of the Ombudsman will assess Namibia's compliance with its international obligations and will emphasize key human rights issues that need to be addressed to give effect to constitutional guarantees.

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.

1.1 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 Law Reform and Development Commission is charged with the project on torture and the drafting of a bill criminalizing torture.

1.2 Namibia still needs to sign and ratify:

- the International Convention on the Protection of all Persons from Enforced Disappearance;
- the International Convention on the Protection of the Rights of Migrant Workers and Members of their Family;
- the amendment to article 8 paragraph 6 of the International Convention on the Elimination of all Forms of Racial Discrimination;

- the optional Protocol to the International Convention on Economic, Social and Cultural Rights (CESCR)

2. Reporting

Although Namibia has submitted reports, it has failed to submit other reports as required by the treaties. For example, Namibia only submitted its initial reports for the Convention Against Torture, International Covenant on Civil and Political Rights and Convention on the Rights of the Child and is significantly delayed in its subsequent reporting. Namibia still needs to submit its initial report for the CESCR, which is 13 years overdue as well as the 2002 and 2007 reports.

3. Dissemination of Concluding Observations

The Ombudsman is unaware of steps that have been taken to disseminate the concluding observations and recommendations of the various Treaty Bodies to which Namibia has reported. The Ombudsman is also unaware of any action that has been taken to implement these recommendations.

Domestic Human Rights Concerns

4. Poverty and Unemployment

Namibia has the greatest income inequality in the world, with a Gini Coefficient of 0.71. Namibia's inequality has grown worse over time and the richest 10% of the population now earns 128 times as much as the poorest 10%. The causes of poverty are many and varied. Namibia's record of creating employment opportunities has been poor. Market orientated policies that rely on the private sector and foreign investments have not yielded the desired results and the lack of decent employment opportunities is a major reason for continuing poverty. It is an undeniable fact that Namibia is faced with a huge unemployment problem. In 2004 the rate of unemployment was 36,7%. It is currently estimated to be 50% and more. Of note is government's support to large projects in the south of the country which stand to generate thousands of employment opportunities, seasonal as well as non-seasonal, i.e. the establishment of a date and grape farm at the Naute dam, and the development of a Desert Star Studios and Motion Picture Resort on the banks of the Orange River. There is also a huge employment opportunity being created in the west through the development of a large retirement village as well as several uranium mines. The Ombudsman calls on government to continue prioritizing the creation of productive employment thereby improving Namibia's income distribution and combating poverty.

5. Education

Education is a key factor in sustainable development and for eradication of poverty. While education has become more accessible in all parts of the country, the level of educational attainment of the Namibian population is still very low. While primary education net enrolment keeps improving at levels of 92,3% in 2007 to 98,3% in 2009, there is a worrying trend of not retaining the number of enrolled primary school learners in secondary education. The education net enrolment for secondary education stood at 52,6% in 2007 and 54,8% in 2009.

This means that proportionally more children drop out or do not get access to education at all. The Namibian Constitution guarantees free and compulsory primary education. However parents must contribute to the school development fund, pay for stationary, uniforms, school books, transport and examination fees. Parents who cannot afford the school development fund may apply for exemption. The Ombudsman calls on government to:

- abolish the school development fund for primary education and to introduce legislative, administrative and other measures to compel children to attend school, thereby reducing the school drop out rate;
- to introduce steps towards progressively achieving free secondary and higher education;
- encourage a culture of respect for human rights from an early age by introducing human rights education in schools;
- expand the program of vocational education to accommodate school drop outs as well as those who complete primary or secondary education but without skills to offer in the urban labour market.

6. Fair Trial

The administration of justice is subject to systemic problems of delay in courts whereby criminal cases may take more than 4 years before coming to trial and judgments are unavailable for years in the High and Supreme Court. Unending postponements of criminal trials, sometimes longer than a year, in the lower courts add to the delays. The right to appeal or review is seriously affected through delays in producing the transcripts of trials and unduly delays in preparing the appeal/review records of proceedings by clerks. The Ombudsman calls on government to develop an administration of justice policy that would address the systemic problems of delays in courts.

7. Prisons

A serious concern is the conditions under which detainees are kept and fed in cells at police stations. The conditions are least to say, horrendous and most cells are extremely overcrowded. The Ombudsman calls on government to make a re-examination of these conditions and establish detailed and up-to date standards for these places of detention. The Ombudsman also calls on government to introduce measures to combat overcrowding in places of detention.

8. Children's Rights

A welcome development in the promotion and protection of children's rights, is the Draft Child Care and Protection Bill which will eventually replace the outdated Children's Act of 1960. The Bill embodies all the existing international commitments, it makes provision for a children's advocate and criminalizes trafficking of children. The Ombudsman calls on government to move swiftly to enactment of the Bill.

9. Domestic Violence

Namibia has good legislation (Combating of Domestic Violence Act, 2003) that provides protection and mechanisms to protect women and children against domestic violence but not all women and children have equal access to such protection or mechanisms. In terms of the Act, only magistrates can issue protection orders. There are a number of towns in Namibia that do not have resident magistrates, with the nearest more than 100 km away, with no public transport to easily reach a magistrate. Although the Act (Regulations) makes provision for the application of a protection order outside court hours or court days, no mechanism is in place to access this provision. The Ministry of Gender Equality and Child Welfare is in the process of drafting a plan to combat violence against women and children. The Ombudsman calls on government to place magistrates at all towns, or provide alternative measures to give equal access for all victims of domestic violence to the protection of the Act.

10. Elections

Despite the numerous reports of minor incidences of pre-election violence, government must be commended for the peaceful manner in which the November 2009 election was conducted. The challenge by opposition parties of the outcome of the November 2009 election is a pure legal process without violence, which is indeed a victory for democracy and the rule of law in Namibia.

11. National Human Rights Action Plan

The Ombudsman has initiated the development of a national human rights action plan so as to rationally establish human rights goals and link human rights to the national planning and development agenda. The next step in the development process is the base line study which enquires considerable resources. Government should be encouraged to take ownership of the process and make the necessary resources available for the successful development and implementation of the plan.

CONCLUSION

As a young democracy, Namibia has made enormous strides in addressing the inequities of the past, achieved national reconciliation, fostered peace and unity and a common loyalty to a single state. However, much more needs to be done to make the practical enjoyment of all human rights and freedoms a reality for all Namibians.