

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

73RD SESSION

NAMIBIA, 8TH-12TH REPORTS

29-30 JULY 2008

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Key facts¹

Date of Ratification	Reservations	Individual Communication Declaration Art 14	Additional ratified core treaties
1982	None	No	CEDAW, ICCPR, ICESCR, CAT, CRC

Type of report	Date submitted	Report submitted on time	NGO / NHRI consultation/input	List of issues provided / Written replies to issues rec'd	Last appearance before Committee
8th-12th	17 July 2007	No	Yes ²	Written replies to the list of issues were not received prior to the session.	14 August 1996

¹ The information in these two tables is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² NGO reports are available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

On 29-30 July 2008 the Committee on the Elimination of Racial Discrimination (the Committee) considered Namibia's 8th to 12th combined periodic reports regarding its implementation of the Convention on the Elimination of Racial Discrimination (the Convention).³ Namibia acceded to the Convention on 11 November 1982 without reservations.

Information submitted to the Committee

State report⁴

Namibia submitted its report to the Committee on 17 July 2007. The 60 page report contained an overview of the application of Articles 2-7 of the Convention covering the period 1997-2006, as no other reports were submitted during this time. The Committee members expressed appreciation for the comprehensive report.

Concerning Article 2, the report canvassed the constitutional and legislative applications of the Convention since Namibia's last report in 1996, and detailed some relevant High Court decisions, namely *S v Smith NO and Others* 1996.⁵ The report further drew attention to the amendments to Namibia's *Racial Discrimination Prohibition Amendment Act*, No 26, which were made in response to the above-mentioned High Court decision. The report detailed the three complaints made to the Ombudsmen since 1996, as well as the recommendations that ensued. Following this, the report outlined the Government's socio-economic empowerment measures for marginalised communities, issues relating to access to land, the literacy program, and the San Development Plan, which aims to break the cycle of poverty affecting the San minority.

Articles 3 and 4 of the Convention were briefly touched upon in the report, as were Articles 6 and 7. Article 5⁶ formed the substantive core of the report and set out affirmative action measures including the *Affirmative Action (Employment) Act* 1998, followed by a systematic breakdown of how Namibia implements the rights and guarantees that are afforded by the Convention. Ten pages of tabulated supporting information supported this section of the report. The presentation of the State report was accompanied during the session by a PowerPoint presentation elaborating on the San Development Plan.

List of issues⁷

The Committee's country rapporteur for Namibia, Mr Ewomsan, had provided the State party with a list of issues, which contained 22 questions relating to Articles 1-14 of the Convention. No written replies were provided prior to the session. While noting Namibia's difficult history of segregation, during his presentation on 29 July Mr Ewomsan expounded on the issues of concern that had been submitted to the delegation. These included discrimination-related education and training for judges, composition of political parties, affirmative action measures for San children, education, and customary laws relating to marriage, divorce, succession and inheritance. Mr Ewomsan urged Namibia to make a declaration under Article 14 of the Convention so as to enable individual communications to be submitted to the Committee. Namibia submitted no written responses prior to the Committee's session, but responded systematically to each question in its oral presentation.

NGO reports⁸

Two non-governmental organisations (NGOs) supplemented the State's submissions on Namibia. The Legal Assistance Centre, the only Namibian public interest law group, submitted a 15-page joint report⁹ on the

³ Available at <http://www2.ohchr.org/english/law/cerd.htm>

⁴ CERD/C/NAM/12, 18 July 2007 available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

⁵ NR 367 (HC), or (2) SACR 675 (NM)

⁶ Article 5 on rights afforded by the Convention.

⁷ CERD/C/NAM/12, available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

⁸ Both NGO reports are available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

intersection between race and gender discrimination. The submission highlighted the discriminatory impact of particular laws in Namibia on black women. Examples include customary laws, the *Native Administration Proclamation 1928*¹⁰, marital property laws, and legislation on marriage, divorce, succession, and inheritance. The report provides a number of recommendations to the Committee, including urging the repealing of certain provisions of the *Native Administration Proclamation*.

The second NGO submission, by the National Society for Human Rights in Namibia, is an extensive 100-page analysis of the compatibility of Namibia's legislative and administrative measures with the Convention. The report also canvasses whether the recommendations made by the Committee during its last examination of Namibia in 1996 have been implemented. The report concludes that Namibia is in serious breach of its obligations under the Convention and that the prevalence of racial discrimination, racism and xenophobia is indicative of the absence of democracy in Namibia.

No NGOs briefed the Committee at the beginning of the session.

Themes and issues

The delegation was headed by Mr Tousy Namiseb, the Chief of Law Reform and representative of the Ministry of Justice, who was supported by Mr Alfred Ilukena, the Deputy Permanent Secretary, Ministry of Education; Mr Nashilongo Shivute, Under Secretary, Ministry of Lands and Resettlement; Mr Gerson Kamatuka, Deputy Director, Office of the Prime Minister; and Ms Neliswa Tjahikika, Chief Legal Officer, Ministry of Justice. In his opening statement, Mr Namiseb asserted that the Namibian Government is 'sincere about doing something about the San People' and that Namibia, having emerged from a history of racial discrimination, had no wish to return to such a social climate. Mr Namiseb then presented a summary of the report submitted to the Committee. Following that, Mr Kamatuka delivered a PowerPoint presentation elaborating on the San Development Plan. The head of the delegation then provided a thorough response to the detailed questions submitted by Mr Ewansom.

The delegation largely responded sincerely and frankly to the questions of the Committee. The Committee members expressed their gratitude for Namibia's enthusiasm for constructive dialogue and highly praised its contributions and progress since its last review by the Committee in 1996. Several questions were not responded to orally; however, the delegation promised to provide written answers to the Committee in the near future.

Status of the Convention under domestic law

The Namibian delegation asserted that the Convention is directly applicable in domestic law, and that the Convention is also directly translated into Namibian law through the *Racial Discrimination Prohibition Act 1998*.

Members of the Committee, Mr de Gouttes and Mr Diaconu, expressed their concern that the 1998 amendment to the *Racial Discrimination Prohibition Act 1991* is more restrictive and lessens the scope for criminal prosecution. The delegation's response to these comments was inadequate. Upon their repetition, the delegation noted the Committee's concerns and expressed its intention to inform the relevant authorities on return to Namibia.

⁹ In conjunction with the International Women's Human Rights Group

¹⁰ An apartheid era law that remains in force, which the Legal Assistance Centre considers discriminatory to black women. See the report of the Legal Assistance Centre, p 2.

The Committee pointed out that Namibia had not ratified the *International Convention on the Protection of the Rights of All Migrant Workers and members of their Families* 2003¹¹ or the Organisation of African Unity's *Convention Governing the Specific Aspects of Refugee Problems in Africa* 1969.¹² The delegation noted the Government's intention to hold further discussions on these treaties in the future, but made no firm commitments.

Both Namibia's written report and its oral submissions highlighted that the definition of racial discrimination contained in the *Racial Discrimination Prohibition Act* 1998 is consistent with the Convention. It furthermore explained that the former is, in turn, an extension of the definition of racial discrimination that is contained within the Namibian Constitution.

The report of the National Society for Human Rights contended this point and underlined that no reference was made to the Convention in any anti-discrimination legislation.¹³

San Development Plan

The rapporteur, Mr Ewansom, commended the delegation on the general progress made in Namibia over the last ten years in implementing human rights. However, he affirmed that more improvement was needed regarding the San people, as 'no major action has broken the cycle of poverty and marginalisation where the San people are victims' and only one fifth of San people have the right to own land. He stressed further that the Land Policy Unit of the Legal Assistance Centre had not improved the situation of the San people. Questions were raised as to what action the Government intended to take in order to restore the educational deficits of San children, who were the lowest educated citizens in Namibia and consequently most vulnerable to exploitation.

The delegation responded that breaking the cycle of poverty for the San people was a key concern of the Government. In this context, the delegation stated 'we are not living in denial'. It reported that educational support for San children was organised at a regional level and that areas where minorities and marginalised groups, such as the San people, resided were targeted for funding support, namely in the form of scholarships. The delegation conceded that there was neither representation nor employment of the San people in the Government, but insisted that programs were under way to restore this deficiency.

The delegation outlined specific programs within the San Development Plan that were implemented to speed up the integration of the San people into the mainstream economy. These included programs involving beekeeping, honey production training and coffin manufacturing.

Committee member Mr Peter raised questions about the extent to which the San Development Plan reflected a top-down approach, and inquired about the involvement of the San people in the process. These questions remained unanswered. However, given the delegation's admission that there were no San members represented in the Government, this would suggest that there is little San autonomy in the Plan.

Government representation

The *Traditional Leaders Act* 1997 established a Council of traditional leaders to advise the President on issues pertaining to customary law. This was raised only briefly in the presentation, and Mr Avtonomov requested further information including on the composition of the Council and the criteria for membership. Mr Ewansom asked for explanations for the reported discrimination between traditional groups that affiliated more closely with the Government and other groups not recognised by the Government. The delegation undertook to provide more information to the Committee in writing.

¹¹ Available at www2.ohchr.org/english/law/cmw.htm

¹² Available at www.africa-union.org/root/au/Documents/Treaties/Text/Refugee_Convention.pdf

¹³ See p. 20 and 32 of the report, available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

The *Traditional Authorities Act 2000* was also briefly mentioned by the delegation. The Act covered all groups in society and established guidelines for the election, powers and functions of traditional authorities in Namibia.

Identity Documents

The rapporteur was concerned that many San people did not possess identity documents, which limited their access to education, social services and pensions. In response, the delegation informed the Committee that Government initiatives were in place to correct this problem. However, mobile teams in the field were encountering difficulties, as many such people did not know their age, and medical experts were required.

Education

Both the State report and the introductory presentation by Mr Namiseb acknowledged the inequalities that exist in access to education. However, in responding to the Committee's list of issues, the delegation affirmed that there was no discrimination with regard to access to schools, as this had been proscribed by the *Education Act 1998*. Private schools may continue to limit their pupils to certain groups, but not on the grounds of race or skin colour.

Satellite schools have been established to ensure access to education for the San minorities in remote areas. The delegation asserted that a revision of the curricula had incorporated international standards, with human rights education as the 'cornerstone'. This was to ensure that 'Namibia is never again subjected to dehumanised regimes'.

The particular vulnerability of black women was a notably absent topic in the discussions with the Committee. The report submitted by the Legal Assistance Centre had stated that many black women, particularly in the north, lacked formal education, making them especially vulnerable to sexual abuse.

The delegation proudly reflected on the changes that have taken place in education since Namibia's independence. It noted that the children who started school after independence would be graduating this year. Mr Peter queried whether Namibia was reaping the dividends of educational reform. The delegation responded that the opening of two universities, and the considerable increase of tertiary graduates were clear indications that it was proving successful.

Labour

The *Labour Act 2007* has been passed and is expected to come into operation in August 2008. It establishes a minimum wage for farm workers. Delays in the operationalisation of the Act were attributed to disagreements on the issues of mediation and arbitration. The *Affirmative Action (Employment) Act 1998* intends to redress discrimination in the public and private sectors. The State, in its report and in the presentation by the delegation, conceded that more work was needed in this area to combat the 'slow progress' thus far, but insisted that progress has accelerated with the support of the Labour Advisory Council.¹⁴

Right to land

The rapporteur expressed concerns that only one fifth of the San minority had the right to land ownership and that many were victims of land expropriation. Namibia repeatedly affirmed that the Constitution did not allow compensation for ancestral land claims as all Namibians have 'lost land in one way or another'. The process of land redistribution was slow and very few Namibians had been allocated land to date. According to Article

¹⁴ Paragraphs 166 and 173 of the State report.

16 of the Constitution, compensation at the market rate was mandatory for expropriation. However, the delegation emphasised the difficulties of balancing land, hunger and democracy. Although no dispossession had taken place since independence, the Government continued to struggle with the aftermath of apartheid, which forcefully redistributed land.

The delegation outlined the *National Resettlement Policy 2001* and made the following points on the need to resettle the San people, many of whom are ‘landless’.¹⁵ The land reform program, as outlined by the delegation, aimed for the acquisition of 12,000 farming units owned by 4,000 families and individuals with the objective of fair distribution and enjoyment of resources. However, an analysis of the statistical targets revealed sluggish progress. Government land reform was a component of the broader project “Vision 2030”, which aimed for Namibia to be a prosperous and industrialised nation enjoying peace and economic stability, as foreseen by the Millennium Development Goals. Some of the Committee’s questions on this issue remained unanswered, including with respect to the proportion of land acquisition that takes place by consent,¹⁶ and the manner in which the land authorities intend to acquire this land given the slow progress so far.¹⁷

Succession and inheritance

The delegation underlined the difficulties Namibia was experiencing in uniting Roman Dutch common law with customary laws of inheritance and succession. For example, the former favours the spouse of the deceased, whereas customary law favours an extended relative and often involves fulfilling spousal obligations, such as the upbringing of children. Three options had been presented by the Law Reform Commission for reconciling these two provisions.¹⁸ Namibia admitted the difficulties it was experiencing in marrying two parallel systems, imposing Roman Dutch common law on indigenous peoples, and reconciling the implications of different succession laws applying to different groups. The Committee’s concluding observations urged Namibia to consider implementing a system whereby the individual could choose between national laws and customary laws, whilst safeguarding against discrimination.¹⁹

Noticeably absent from this discussion on succession was the assertion made by the Legal Assistance Centre that in ‘most communities, the widow is expected to have sexual relations with the man who inherits her’.²⁰ Another point which was absent from the discussion was the reported practice that if the widow refuses to be inherited, she is forced to relinquish her property and in some cases custody of her children, a practice which is acutely marginalising black widows in Namibia.

Conclusions and next steps

The Committee congratulated Namibia for a constructive dialogue. The rapporteur concluded that Namibia had made a lot of progress, but that much remained to be done. In its examination, the Committee focused heavily on the San community, with little mention of other minorities. It expressed its hope that Namibia would improve the regularity of submitting its periodic reports in the future. Committee member Mr Lindgren clearly distanced himself from the overall sentiments of the Committee, by censuring his colleagues for being overly critical of Namibia’s efforts in light of its history of institutionalised discrimination. Mr Lindgren’s comments, while predictably welcomed by the delegation, were somewhat counter-productive, given that the

¹⁵ Paragraph 80 of the State report.

¹⁶ Mr Diaconu

¹⁷ Mr Kemal

¹⁸ Firstly, that customary law should prevail subject to alignment with the Constitution. Secondly, that all estates should be given to the surviving spouse, which is likely to be met with resistance. Thirdly, a compromise, that affords a fixed percentage to the spouse and a fixed percentage to a relative.

¹⁹ Concluding observations paragraph 11, available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

²⁰ Available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

overall tone of the Committee members had, in any case, been constructive and not confrontational. The Committee concluded the session by expressing its hope that its dialogue with the delegation would stimulate Namibia to better implement the Convention.

The Committee's concluding observations expressed disappointment that ten years had passed between reports. The Committee invited Namibia to adhere to suggested timing requests. The concluding observations further recommended that the Government ensure that all laws are consistent with the Convention, in particular with respect to education, combating hate speech, respecting the rights of asylum seekers and immigrants, land rights and indigenous rights.

With regard to reports of other treaty bodies, the Committee on the Elimination of Discrimination Against Women expressed concerns in 2007 about the persistence of strong patriarchal attitudes and stereotypes, and noted that the Traditional Authorities Act 2000 in particular had a negative impact on the customary practices of women.²¹

The Committee requested that Namibia submit its combined 13th, 14th and 15th reports by 31 July 2012.

Last revised and updated: 30 September 2008.

²¹ Paragraph 16, available at www2.ohchr.org/english/bodies/cedaw/cedaws37.htm

TREATY BODY MONITOR STAFF

Eléonore Dziurzynski, Communications Officer, Geneva
Gareth Sweeney, Deputy Manager, Geneva
Katrine Thomassen, Manager International Programme, Geneva
Michael Ineichen, Human Rights Officer, Geneva
Michelle Evans, Representative to the UN, New York
Paul Dziatkowicz, Human Rights Officer, Geneva
Vanessa Jackson, Human Rights Officer, New York
Yuri Saito, Fellow, Geneva

AUTHORS OF THE NAMIBIA REPORT

Marita Swain, Intern

ABOUT THE PUBLICATION

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