



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-first session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

Namibia

1. The Committee considered the initial report of Namibia (CCPR/C/NAM/2003/1) at its 2200th, 2201st and 2202nd meetings (CCPR/C/SR.2200, CCPR/C/SR.2201 and CCPR/C/SR.2202), on 14 and 15 July 2004, and adopted the following concluding observation at its 2216th meeting (CCPR/C/SR.2216), on 26 July 2004.

A. Introduction

2. The Committee welcomes the initial report of Namibia, although it regrets the delay of over eight years in its submission. The Committee encourages the State party to use the Committee's guidelines for the preparation of the next periodic report, and to include more factual information on the actual implementation of the Covenant.

B. Positive aspects

3. The Committee notes the efforts made by the State party in establishing and developing democratic institutions since independence in 1990. The Committee commends the State party for doing so in a spirit of cooperation with non-governmental organizations and international bodies.

4. The Committee commends the State party for having abolished, at the constitutional level, the death penalty for all crimes (art. 6 of the Covenant).

5. The Committee welcomes the fact that the Constitution stipulates that general rules of international law and international agreements binding on the State party are part of the domestic law and appreciates the information on the use made by the State party's courts in recent cases concerning provisions of the Covenant (art. 2).

C. Principal subjects of concern and recommendations

6. The Committee is concerned that article 144 of the Constitution may negatively affect the full implementation of the Covenant at the domestic level (art. 2).

The State party should reconsider the status of the Covenant vis-à-vis domestic law in order to ensure the effective implementation of the rights enshrined therein.

7. The Committee welcomes the establishment of the institution of the Ombudsman. It notes that the legislation concerning the Ombudsman requires further strengthening (art. 2).

The State party should strengthen the legislative mandate of the institution of the Ombudsman and provide further resources to it, so that it may be in a position to fulfil its mandate efficiently.

8. The Committee acknowledges the information provided by the State party on the implementation of its Views adopted under the Optional Protocol with regard to cases No. 760/1997 (*Diergaardt et al. v. Namibia*) and No. 919/2000 (*Müller and Engelhard v. Namibia*). It nevertheless notes with concern the absence of a mechanism to implement the Committee's Views adopted under the Optional Protocol (art. 2).

The State party should establish a mechanism to implement the Committee's Views adopted under the Optional Protocol.

9. The Committee welcomes the Married Persons Equality Act, which eliminates discrimination between spouses. It nevertheless remains concerned at the large number of customary marriages that are still not registered and about the consequent deprivation of women and children of their rights, in particular with regard to inheritance and land ownership (arts. 3, 23 and 26).

The State party should take effective measures to encourage the registration of customary marriages and to grant the spouses and the children of registered customary marriages the same rights as are granted to the spouses and children of marriages under civil law. The future Bill on Intestate Inheritance and Succession and the future Bill on Recognition of Customary Law Marriages should take these considerations into account.

10. The Committee appreciates the efforts undertaken by the State party to combat HIV/AIDS and to provide wider sexual education in this regard. However, these efforts are not adequate in view of the magnitude of the problem (art. 6).

The State party should pursue its efforts to protect its population from HIV/AIDS. It should adopt comprehensive measures encouraging greater numbers of persons suffering from the disease to obtain adequate antiretroviral treatment and facilitating such treatment.

11. The Committee notes with concern that the crime of torture is not defined in domestic criminal law and is still considered a common law offence to be charged as assault or *crimen injuria* (art. 7).

The State party should, as a matter of priority, make torture a specific statutory crime.

12. Although the Committee notes the decrease in reported violations of human rights in the northern parts of Namibia, it regrets that no extensive fact-finding initiatives have been

undertaken to determine accountability for alleged acts of torture, extrajudicial killings and disappearances (arts. 6, 7 and 9).

The State party should establish an effective mechanism for the investigation and punishment of such acts.

13. The Committees appreciates the efforts undertaken by the State party in increasing the number of magistrates throughout the country, so as to ensure strict observance of the 48-hour rule for bringing a suspect before a trial judge. Nevertheless, it remains concerned that cases of prolonged pre-trial detention not compatible with article 9 of the Covenant may continue to occur.

The State party should continue its efforts to ensure respect of the 48-hour rule and should closely monitor all cases where this rule is not respected.

14. While the Committee takes note that, at present, magistrates are mandated to carry out independent inspections of detention centres, the Committee reiterates the need for an additional external and independent body mandated with the task of visiting the centres and receiving and investigating complaints emanating therefrom (arts. 9 and 10). A strong and independent mechanism is also required for the investigation of allegations of acts of police brutality in general.

The State party should consider establishing an independent body that would be able to visit all places of detention and conduct investigations into violations of rights and abuses in prisons and places of detention, and to investigate acts of police brutality in general.

15. The Committee takes note of the reports that certain media personnel and journalists have faced harassment and that these allegations have not been investigated either promptly or thoroughly by the competent authorities (arts. 18 and 19).

The State party should take appropriate steps to prevent threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and with the requisite thoroughness and that suitable action is taken against those responsible.

16. The Committee notes with appreciation the decision of the Supreme Court in *The State v John Sikundeka Samboma and others* (known as the Caprivi treason trial) reaffirming the right of persons in Namibia to legal aid. However, the Committee is concerned that access to this right is not properly ensured in practice (art. 14).

The State party should take measures to strengthen the implementation of the legal aid scheme and ensure the provision of legal aid to individuals entitled to receive it, in particular by increasing the availability of funds.

17. The Committee is concerned that the State party is not complying fully with the obligation to ensure the right to be tried without undue delay as enshrined in article 14, paragraph 3 (c), of the Covenant, especially taking into account the number of cases that remain pending.

The State party should take urgent steps to guarantee that trials take place within a reasonable period of time. Special measures should be taken to address the backlog of cases, in particular through the necessary increase in the number of judges.

18. The Committee expresses its concern about the absence of any mechanism or procedure for the removal of judges for misconduct (art. 14).

The State party should establish an effective and independent mechanism and provide for a proper procedure for the impeachment and removal of judges found guilty of misconduct.

19. The Committee takes note of the draft Child Status Bill, aimed at enabling children born out of wedlock to have the same rights as those born within wedlock. The Committee notes with

concern, however, that children do not get the type of special protection that they require in the area of the administration of justice, in particular in the criminal justice system (arts. 10, 14 and 24).

The State party should take measures to establish an appropriate juvenile criminal justice system in order to ensure that juveniles are treated in a manner commensurate with their age.

20. While the Committee commends the State party for the enactment of the Combating Domestic Violence Act, which criminalizes domestic violence, the Committee regrets that, despite the wide prevalence of domestic violence, so far only 62 persons have been prosecuted and no victims have been compensated (art. 23).

The State party should encourage further use of this Act, especially by training the police force and sensitizing it to the needs of victims. Additional special shelters for those suffering from domestic violence should be created.

21. While the Committee notes the reason why the State party recognizes only one official language, it is concerned that those persons who do not speak the official language may be discriminated against in the administration of public affairs and in the administration of justice (arts. 25, 26 and 27).

The State party should take measures to ensure, to the extent possible, that persons who only speak non-official languages used widely by the population are not denied access to public service. It should undertake measures to protect the use of such languages.

22. The Committee notes the absence of anti-discrimination measures for sexual minorities, such as homosexuals (arts. 17 and 26).

The State party should consider, in enacting anti-discrimination legislation, introducing the prohibition of discrimination on the ground of sexual orientation.

D. Dissemination of information about the Covenant (art. 2)

23. The second periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GU/Rev.1) and be submitted by 1 August 2008. The State party should pay particular attention to providing practical information on the implementation of legal standards existing in the country. The Committee requests that the text of the present concluding observations be published and disseminated throughout the country.

24. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 9 and 11. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.
