



THE OMBUDSMAN: NAMIBIA (NHRI)

Submission to the Committee on the Elimination of

Discrimination against Women

Submitted January 2021

INTRODUCTION

The Ombudsman: Namibia is established under Chapter 10 of the Namibian Constitution and its enabling legislation is the Ombudsman Act, No 7 of 1990. It is a multifunctional office, that is, classical Ombudsman with additional mandates. The mandates are the receiving and investigation of complaints relating to maladministration; violation of human rights and freedoms, misappropriation of public monies and misuse of property by officials and the protection of the environment. The office received a status “**A**” accreditation from the Global Alliance of National Human Rights Institutions (GANHRI) during April 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..

The Ombudsman must credit the government for the enormous effort it has made to improve the human rights situation in Namibia. However, more needs to be done to ensure that the rights and freedoms guaranteed in our Constitution and the international instruments, ratified by Namibia, become a reality for all Namibians. The submission of the Ombudsman will emphasize key human rights issues that need to be addressed to give effect to constitutional guarantees. **These issues and other are also addressed in our Report on the National Inquiry into Racism, racial and other Forms of Discrimination and Tribalism. (2017)¹**

INTERNATIONAL TREATY OBLIGATIONS

1. Ratification

Namibia has ratified nearly all core international and regional human rights

¹See: Website: www.ombudsman.org.na

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 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.

Gender Based Violence

The ever-increasing number of gender based violence cases, is a matter of grave concern. Despite the existence of the Combating of Domestic Violence Act, 2003 that

²See: Website: Annual Report 2019: Monitoring places of detention

provides protection and mechanisms to protect women and children, violence against them remains widespread. Legislation alone is not enough, it only deals with the fact after commission of such violence; more is needed. Tolerance education should be considered an urgent imperative. The Ombudsman calls on government to devote special attention to improving teacher training, curricula content of textbooks, lessons, new educational technologies, with a view to educating caring and responsible citizens open to other cultures, able to appreciate the value of freedom, respect for human dignity and differences and able to prevent conflicts or resolve them by non-violent means in line with the Declaration of Principles on Tolerance. The Ombudsman also calls on government to review the Act and effectively implement its provisions.

The withdrawal of criminal charges of gender based violence before prosecution, by victims, is another matter of grave concern. The Ombudsman calls on government to establish family courts to deal exclusively and speedily with crimes of gender-based violence, protection orders, illegal abortion, child abandonment, maintenance matters, etc.

Poverty and Unemployment

Namibia's 4th National Development Plan (NDP4) 2012/2013 – 2016/2017 acknowledges that Namibia continues to be characterized by poverty in the midst of plenty resources; despite the Poverty Reduction Strategy and the Poverty Reduction Action Plan in place for a decade.

The Namibia Household Income and Expenditure Survey (NHIES) 2015/2016 Report shows that the incidence of poverty in female-headed households is higher with 19.2% compared to the male-headed households with 15.8%. The female-headed households also have a larger incident of severely poverty with 11.7% compared to 9.9% for male-headed households.

About 25.1% of rural households are poor compared to 8.6% for urban households. About 15.9% of the rural household were found to be severely poor compared to 4.8% in urban areas. When compared to the 2009/2010 NHIES, the number of severely poor people in rural areas has increased from 13.56% to 15.9% present. The GINI coefficient for 2003/2004, 2009/2010 and 2015/2016 is 0.60, 0.58 and 0.56 respectively. This shows that inequality in the distribution of income has decreased, albeit incrementally. Despite this decline, the levels of inequality in Namibia remains among the highest in the world.

Namibia is still faced with a huge unemployment problem, especially among the youth. Wages and salaries play significant roles in the livelihood of the majority, as 48% or more of the country's population depends on wages for subsistence. Neither the Labour Act, 2007 nor any other law provides for statutory minimum wages, although the mining, construction and agricultural sectors set basic levels of pay through collective bargaining. Provision is made for minimum wages for domestic workers. This highlights the need for Government to introduce a comprehensive wage policy in the country calling for the introduction of minimum wages in all sectors of the economy.

The Ombudsman calls on Government to prioritize the creation of productive employment especially for women to improve Namibia's income distribution and to combating poverty.

Education

Namibia has made great progress in providing access to education to just over 95% of the student-age population. However the quality of instruction is often unsatisfactory, especially in schools serving poor communities. More than 20% of teachers have no teaching qualifications. The low performance of students on end-of-year tests suggests that teaching is not having the intended impact on student learning. In Grade 8, 30% of students repeat the grade. More than one-third of all students drop out by Grade 10. The transition from secondary to higher education is also very low, currently estimated at 19% of the Grade 12 group.³

The quality and relevance of university education has been a serious concern of both private and public sector employers. The provision of technical, vocational education and training also remains a serious challenge. About 3500 students fell pregnant between 2017 and 2018, leading to more than 2000 of them dropping out of school during the same period. This problem is closely linked to problems of illegal and unsafe abortions and infant abandonment. The Ombudsman calls on Government to:

³Republic of Namibia: Namibia Fifth National Development Plan (NDP5) 2017/18 – 2021/22

- introduce legislative, administrative and other measures to compel children under the age of 16 years to attend school, thereby reducing the school drop out rate;

- expand the programme of technical, vocational education and training to accommodate school drop outs;
- encourage a culture of respect for human rights from an early age by introducing human rights education in schools;
- provide education facilities that are on par in all parts of the country;
- provide information to school girls on how to access sexual and reproductive health information that is evidence-based, non-discriminatory and respectful of their dignity and autonomy;
- take all steps and measures to ensure that all learners have access to equitable inclusive quality education that will allow them to pursue higher education.

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 Prohibition of Unfair Discrimination, Harassment and Hate Speech Bill, which has the following features:

- It prohibits unfair discrimination
- It prohibits harassment
- It prohibits hate speech
- It defines unfair discrimination, harassment and hate speech
- It establishes equality courts to adjudicate breaches of the prohibitions
- It promotes equality

The Bill will be submitted to Government for consideration.

The Ombudsman calls on Government to move swiftly to enactment of the long outstanding Child Justice Bill, the Divorce Bill, Recognition of Customary Marriage Bill,

Intestate Succession Bill, Small Claims Court Bill, Access to Information 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 eliminate all forms of discrimination against women. 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.