



## **THE OMBUDSMAN: NAMIBIA (NHRI)**

### **Submission to the Universal Periodic Review Mechanism**

**Submitted on June 2015**

#### **INTRODUCTION**

The Ombudsman: Namibia was established under Chapter 10 of the Namibian Constitution and the Ombudsman Act, No 7 of 1990. It is a multi function office, that is, classic 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 International Coordinating Committee of National Human for the Promotion and Protection of Human Rights (ICC) during April 2006 and retains its status “**A**” accreditation during the re-accreditation process in 2011.

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 government must also be commended for implementing many of the accepted recommendations of the first cycle of the Review. The submission of the Ombudsman 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. In the absence of a national preventative mechanism, the Ombudsman visits prisons and places of detention to receive complaints from inmates and inspects the facilities.

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. The Ombudsman calls on Government to make a concerted effort to submit all outstanding reports.

## **3. Dissemination of Concluding Observations**

Under the national human rights action plan, the Ombudsman is tasked with the dissemination of concluding observations and with monitoring the implementation thereof.

## **Domestic Human Rights Concerns**

Education is a key factor in sustainable development and for eradication of poverty. Government must be commended for providing a comprehensive education system for children which makes basic and further education available in the form of early childhood and pre-primary education, primary and secondary education, vocational

education and training and tertiary education. Government must further be commended for the abolishment of the compulsory school development fund, which made primary education more accessible. Enrolment and retention rates at primary level are exceptional, with a net primary enrolment rate of almost 90%. There is, however, a worrying trend of not retaining the number of enrolled primary school learners in secondary education. Teenage pregnancies are still unacceptably high, The Ombudsman calls on Government to:

- Abolish the school development fund for secondary education and to introduce 'legislative, administrative and other measures to compel children to attend school, thereby reducing the drop-out rate.
- Expand the programme of vocational education to accommodate school drop outs as well as those who completed primary and secondary education, but without skill to offer in the urban labour market.
- Provide education facilities that are on par in all parts of the country.
- Introduce compulsory human rights education to ensure that education is aimed at strengthening respect for human rights and fundamental freedoms and that this be integrated in education policies in line with the Vienna Declaration and Program of Action.

### **Children's Rights**

A welcome development in the promotion and protection of children's rights, is the recently promulgated Child Care and Protection Act, no 3 of 2015. The Act embodies all the existing international commitments, it makes provision for a Children's Advocate and criminalizes trafficking in children. The capacity of the Ombudsman office has been strengthened not only by the appointment of the Children's Advocate but also by legal officers and social workers, to monitor, promote and protect children's right. The Ombudsman calls on government to move swiftly to put the Act and its regulations into operation.

### **Prisons**

Government must be commended for the improvements at and upgrading of existing prisons and police cells. However a serious concern is still the conditions under which

detainees are kept and fed in some 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 provides protection and mechanisms to protect women and children, violence against them remains widespread. Legislation alone is not enough, it only deals with the consequences 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.

### **Poverty and Unemployment**

Namibia remains one of the most economically unequal countries in the world. Entrenched poverty impacts significantly on the overall well-being of people, special children. The causes of poverty are many and varied. In addition, Namibian is faced with a huge unemployment problem. Government must be commended for the creation of a fully fledged Ministry of poverty eradication and social welfare and the Ombudsman calls on government to prioritize the creation of productive employment thereby improving Namibian's income distribution and combating poverty.

### **Fair Trial**

The administration of justice is subject to systemic problems of delay in courts whereby criminal cases may take 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 huge backlog of criminal cases in courts, especially the lower courts, is another matter of great concern. The Ombudsman calls on government to develop an administration of justice policy that would address the systemic problems of delays in courts.

### **Indigenous People's Rights**

The Ombudsman developed a draft whitepaper on indigenous peoples' right which is submitted to government for consideration and adoption.

### **National Human Rights Action Plan**

Government must be commended for the adoption of Namibia's first National Human Rights Action Plan (NHRAP) and for mandating the Ombudsman to monitor the implementation plan. The NHRAP is comprehensive and contains achievable goals for the next 5 years under the following prioritized human rights areas of education, health, land, water and sanitation, housing, access to justice and the right not to be discriminated against. The Ombudsman calls on government's support; a successful implementation of the plan, will change the human rights landscape of Namibia and will bring it closer to the objective of human rights for all.

### **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, there always have been and will continue to be challenges for the Government in regard to promotion, protection and advocacy of human rights. A concerted effort by government, the Ombudsman, civil society and the private sector in implementing the NHRAP will greatly assist in addressing these challenges.