


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>  <b><i>African Commission on Human &amp; Peoples' Rights</i></b>		<b>UNIÃO AFRICANA</b>  <b>Commission Africaine des Droits de l'Homme &amp; des Peuples</b>
31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 4410505 / 4410506; Fax: (220) 4410504 E-mail: <a href="mailto:achpr@achpr.org">achpr@achpr.org</a> ; Web <a href="http://www.achpr.org">www.achpr.org</a>		

***Promotion Mission Report to the Republic of Namibia***

**24 - 27 AUGUST 2009**



## **ACKNOWLEDGEMENT**

The African Commission on Human and Peoples' Rights (the African Commission) would like to express its profound gratitude to the government of the Republic of Namibia for inviting it to undertake a promotion mission to the country, and for putting at the disposal of its delegation all the necessary facilities and personnel to ensure the success of the mission.

The African Commission is grateful to the authorities for their hospitality and support during the mission. A special note of appreciation is extended to the Ministry of Foreign Affairs and the Ministry of Justice and its staffs who accompanied the delegation and the efforts made to ensure that all the appointments were respected.

The African Commission also expresses thanks to all the civil society organisations for taking time off their busy schedules to meet with the delegation.

## **INTRODUCTION**

1. The African Charter on Human and Peoples' Rights ( African Charter)came into force on 21 October 1986 upon the ratification by the requisite number of State Parties. The first members of the African Commission were elected at the 23<sup>rd</sup> OAU Assembly of Heads of State and Government in July 1987 and the inaugural session of the African Commission took place in November 1987.
2. Under the African Charter, the African Commission is mandated to promote the observance of the African Charter, monitor its implementation, and ensure the protection of the rights and freedoms set out in the Charter, interpret the African Charter and advise on its implementation.
3. Article 45 of the Charter for example, requires the African Commission to promote human and peoples' rights through among other things, research, studies and undertaking visits to State Parties to gather information in human and peoples' rights and formulating rules and regulations that could be used by State Parties in their policies and legislation.
4. The promotion mission to the Republic of Namibia was undertaken from the 24-27 August 2009, and was thus within the context of the promotion mandate of the African Commission under Article 45 of the African Charter.

## **Brief History & Political Background**

5. The San peoples may have inhabited what is now Namibia for more than 2,000 years. The Bantu-speaking Herero migrated there in the 1600s, and the Ovambo, the largest ethnic group today, migrated in the 1800s.
6. In the late 15th century, the Portuguese explorer Bartolomeu Dias became the first European to visit Namibia. Formerly called South-West Africa, the territory became a German colony in 1884. Between 1904 and 1908, German troops massacred tens of thousands of Herero, who had revolted against colonial domination. In 1915, during World War I, Namibian territory was taken over by South African forces. In 1921, it became a mandated territory of the League of Nations, under the administration of South Africa<sup>1</sup>.
7. Upon the dissolution of the League of Nations in 1946, South Africa refused to accept United Nations authority and to replace its mandate with a UN trusteeship. A black Marxist separatist group, the South West Africa

---

<sup>1</sup> [www.inforplease.com](http://www.inforplease.com). Encyclopedia-Namibia

People's Organization (SWAPO), formed in 1960 and began small-scale guerrilla attacks aimed at achieving independence. In 1966, the UN called for South Africa's withdrawal from the territory, and officially renamed it Namibia in 1968. South Africa refused to obey. Under a 1974 Security Council resolution, South Africa was required to begin the transfer of power or face UN action. Prime Minister Balthazar J. Vorster rejected UN supervision, claiming that his government was prepared to negotiate Namibian independence, but not with SWAPO, which the UN had recognized as the "sole legitimate representative" of the Namibian people<sup>2</sup>.

8. South Africa handed over limited powers to a new multiracial administration in 1985 (the previous government had enforced South Africa's apartheid laws). Installation of this government ended South Africa's direct rule, but South Africa retained an effective veto over the new government's decisions. Finally, in 1988 South Africa agreed to a plan for independence. SWAPO leader Sam Nujoma was elected president, and on March 21, 1990, Namibia achieved independence.
9. Nujoma was re-elected in 1994 and again in 1999, after the constitution was amended to allow him to seek a third term. Nujoma announced in Nov. 2001 that he would not seek re-election when his term expired in 2004. In Nov. 2004, Hifikepunye Pohamba of SWAPO was elected president with 76% of the vote. He took office on March 21, 2005.
10. In 2004, Germany issued a formal apology for the massacre of Herero by German colonial troops between 1904 and 1908<sup>3</sup>.

## Geography

11. Namibia is bounded on the north by Angola and Zambia, on the east by Botswana, and on the east and south by South Africa. It is for the most part a portion of the high plateau of southern Africa, with a general elevation of from 3,000 to 4,000 ft<sup>4</sup>.

## Land & People

12. The Population of Namibia is 2.1 million people<sup>5</sup>. The population growth rate is depressed by an HIV/AIDS prevalence rate estimated to be 15.3%. Namibians are of diverse ethnic origins. The principal groups are the Ovambo, Kavango, Herero/Himba, Damara, mixed race ("coloured" and

---

<sup>2</sup> [www.inforplease.com](http://www.inforplease.com). Encyclopedia-Namibia

<sup>3</sup> [www.inforplease.com](http://www.inforplease.com). Encyclopedia-Namibia

<sup>4</sup> [www.inforplease.com](http://www.inforplease.com). Encyclopedia-Namibia

<sup>5</sup> 2008 estimate. [www.inforplease.com](http://www.inforplease.com). Encyclopedia-Namibia

Rehoboth Baster), white (Afrikaner, German, and Portuguese), Nama, Caprivian, San, and Tswana<sup>6</sup>.

13. The Ovambo make up about half of Namibia's people. The Ovambo, Kavango, and East Caprivian peoples, who occupy the relatively well-watered and wooded northern part of the country, are settled farmers and herders. Historically, these groups had little contact with the Nama, Damara, and Herero, who roamed the central part of the country vying for control of sparse pastureland. German colonial rule destroyed the war-making ability of the tribes but did not erase their identities or traditional organization. People from the more populous north have settled throughout the country in recent decades as a result of urbanization, industrialization, and the demand for labour<sup>7</sup>.

### **Economy**

14. The Namibian economy has a modern market sector, which produces most of the country's wealth, and a traditional subsistence sector. Namibia's gross domestic product (GDP) per capita is relatively high among developing countries but obscures one of the most unequal income distributions on the African continent. Although the majority of the population depends on subsistence agriculture and herding, Namibia has more than 200,000 skilled workers, as well as a small, well-trained professional and managerial class.
15. The country's sophisticated formal economy is based on capital-intensive industry and farming. However, Namibia's economy is heavily dependent on the earnings generated from primary commodity exports in a few vital sectors, including minerals, livestock, and fish. Furthermore, the Namibian economy remains integrated with the economy of South Africa, as the bulk of Namibia's imports originate there. Because of inadequate rainfall, crops are not widely raised and pastoralism forms the backbone of the agricultural sector<sup>8</sup>.

### **Legal System**

16. The Namibian legal system is characterized by legal pluralism. It is an amalgamation of Westminster-style Constitutional law, Roman-Dutch common law, customary law and international law. Most of what constitutes the corpus of Namibian law is not codified and must be distilled from the evolving body of jurisprudence.
17. The President of Namibia is the head of state, the government, and Commander-in-Chief of the armed forces. The President is elected by direct election in a system of universal suffrage for a term of 5 years. He

---

<sup>6</sup> US Department of State: *Diplomacy in Action*,(2009). <http://www.state.gov/r/pa/ei/bgn/5472.htm>

<sup>7</sup> US Department of State: *Diplomacy in Action*,(2009). <http://www.state.gov/r/pa/ei/bgn/5472.htm>

<sup>8</sup> [www.inforplease.com](http://www.inforplease.com). Encyclopedia-Namibia

is restricted to a limit of two terms. The President is responsible for upholding the law and constitution, and for reporting to the National Assembly once a year. He also appoints the Prime Minister, Attorney General, and other members of his cabinet. He or she must sign bills into law and may submit proposed legislation to the Assembly. The President's actions are subject to review by the Assembly. The Assembly can reverse Presidential actions by a two-thirds vote of all voting members<sup>9</sup>.

18. The Cabinet consists of the President, the Prime Minister, and any other ministers the President appoints from the National Assembly. The Prime Minister is responsible for conducting the business of the government in parliament and to advise and assist the President in executing the functions of the government. The Cabinet directs and supervises the Ministries for the President, and reports to the National Assembly on issues of international trade and treaties.
19. The National Council is composed of two members from each region who are elected for a six year term of office. They are responsible for conducting investigations, recommending legislation, and reviewing legislation passed by the National Assembly. If a bill is reviewed and passed by the Council, it moves on to the President for signature. If it is not agreed to by the Council, it is presented to the Assembly with comments or amendments for further consideration<sup>10</sup>.
20. The National Assembly is made up of 72 members who are directly elected by a proportional representation system. The National Assembly has legislative authority. In order for a bill to become a law it must be passed by the National Assembly, signed by the President, and published in the journal of record. If the President refuses to sign a bill that has been ratified by a 2/3 majority of the Assembly, the bill is referred to the courts for a determination of constitutionality. If the bill is found to be within the constitution, the President must sign the bill. In the case that the Assembly fails to pass a bill with a 2/3 majority and the President refuses to sign it, the bill is abandoned.
21. The President has the authority to dissolve the National Assembly if it becomes clear that it cannot discharge its mandate effectively. If this occurs, it is required that new elections be held within 90 days. In the normal course of events each Assembly sits for five years<sup>11</sup>.

---

<sup>9</sup> Namibia Legal System: [http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia\\_Legal\\_System.htm](http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia_Legal_System.htm)

<sup>10</sup> Namibia Legal System:  
[http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia\\_Legal\\_System.htm](http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia_Legal_System.htm)

<sup>11</sup> Namibia Legal System:  
[http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia\\_Legal\\_System.htm](http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia_Legal_System.htm)

22. Chapter 9, Articles 78-88 of the Constitution lay down the authority and structure of the judiciary. The other branches of the government are expressly prohibited from interfering with the administration of the justice, are further obliged to protect the independence. The courts are divided into three levels. The highest court is the Supreme Court which is led by a Chief Justice and consist of at least three other judges. The Supreme Court has appellate jurisdiction over appeals from the High Courts, cases involving interpretation of the constitution, and matters referred to them by the Attorney General.
23. The High Court consists of a Judge-President, and such other judges as are appointed. The High Court has original jurisdiction over matters concerning interpretation of the constitution, all civil and criminal cases, and cases on appeal from the Lower Courts. The Lower Courts are presided over by Magistrates and have jurisdiction of such cases and matters provided for by act of Parliament<sup>12</sup>.

#### **The Preparation of the mission**

24. The mission was undertaken by Commissioner Pansy Tlakula, a member of the ACHPR responsible for the promotion and protection of human rights in the Republic of Namibia, and the Special Rapporteur for Freedom of Expression and Access to Information in Africa. She was accompanied by Mrs. Aminata Jawara-Manga, Legal Officer at the Secretariat of the African Commission.

#### **Terms of reference of the mission**

25. The terms of reference of the mission included:-
  - To promote the African Charter on Human and Peoples' Rights and the activities of the African Commission on Human and Peoples' Rights;
  - To engage the Government of the Republic of Namibia on the measures it has or is taking to implement its international human rights obligations in general and its obligations under the African Charter in particular;
  - To exchange views with the government of the Republic of Namibia on the challenges it may be facing in fulfilling its international and regional human rights obligations and the extent to which the African Commission can assist;

---

<sup>12</sup> Namibia Legal System:  
[http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia\\_Legal\\_System.htm](http://faculty.cua.edu/Fischer/ComparativeLaw2002/Namibia_Legal_System.htm)



- To exchange views with other human rights stakeholders in the Republic of Namibia on ways and means of promoting and protecting human rights in the country;
- To encourage closer collaboration between the African Commission and the State on the one hand, and between the African Commission and civil society organisations on the other; and
- To encourage the government of the Republic of Namibia to participate regularly in the activities of the African Commission including attending sessions of the Commission.

## **MEETINGS HELD DURING THE MISSION**

### **Courtesy visit to the Ministry of Foreign Affairs of Namibia – Head of Department: Multilateral Affairs, Ambassador Martin Andjaba.**

26. The mission started with a courtesy visit to Ambassador Martin Andjaba, who is the head of Department for Multilateral Affairs at the Ministry of Foreign Affairs of Namibia.
27. Commissioner Tlakula informed Ambassador Martin Andjaba that the African Commission was in Namibia on a promotional mission to meet and hold discussions with relevant human rights stakeholders to assess the progress that Namibia was making in promoting and protecting the rights and obligations enshrined in the African Charter. She indicated that she had responsibility over four (4) countries, which are, The Gambia, Namibia, Swaziland and Zambia.
28. She said after the mission, the delegation will prepare a report which will be presented to the African Commission for adoption, after which it will be transmitted to the State for its comments. The report will thereafter be published.
29. Commissioner Tlakula expressed concern regarding Namibia's failure to attend the session of the African Commission regularly and for not submitting its periodic reports since 2000. She encouraged Namibia to host the sessions of the African Commission and to submit its periodic reports in accordance with Article 62 of the African Charter.
30. Ambassador Martin Andjaba on his part welcomed the delegation and said that the ministry is committed to the work of the African Commission. He explained that the Ministry of Justice (and not the Ministry of Foreign

Affairs) was the line ministry responsible for drafting State Reports and attending sessions of the African Commission, and as such he would not know why Namibia had not been attending the sessions of the Commission. Regarding the proposal to host one of the sessions of the Commission, he pointed out that the Namibian government would consider the proposal if a formal request to that effect is submitted to the relevant ministry.

31. Ambassador Martin Andjaba expressed concern that not much is known about the African Commission and its work in Southern Africa.
32. Ambassador Martin Andjaba informed the delegation that it was unfortunate that the visit of the African Commission co-incided with the commemoration of “Hero’s Day” on 26 August 2009, therefore that many government officials would not be available to meet with the delegation.
33. Commissioner Tlakula expressed concern that Namibia had not ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, and the African Charter on Democracy, Elections and Governance in Africa. She urged Namibia to ratify these instruments. Ambassador Andjaba noted the request and promised to work on the process. He thanked the delegation and expressed that the delegation should meet with all relevant stakeholders in order to understand the human rights situation in Namibia.

#### **Meeting with National Society for Human Rights of Namibia (NSHR)**

34. The delegation met with the Executive Director of the NSHR, Mr. Phil Ya Nangoloh and his team. After explaining the mandate of the African Commission, Commissioner Tlakula informed the team of the purpose of the mission to Namibia.
35. Commissioner Tlakula indicated that she was interested to know the successes and challenges Namibia was faced with in promoting and protecting rights enshrined in the African Charter.
36. In his response, Mr. Ya Nangoloh started by explaining the mandate of his institution, which he said had been in existence since 1989 and enjoyed the observer status with the African Commission. He indicated that the Society specialised in human rights advocacy and monitoring. He indicated that the institution also issued reports on various thematic issues on human rights in Namibia to international and regional human rights bodies such as, the ACHPR and the United Nations Committee on the Elimination of all Forms of Discrimination against Women.

37. He informed the delegation that his organization submitted a report to the African Commission on the human rights situation in Namibia for a period of 12 months ending December 2008. The delegation was informed that the most systemic human rights violations was the lack of accountability by people who held political power. Mr. Ya Nangoloh indicated that although Namibia was not a poor country, it had one of the worst distributions of income in Africa. He indicated that 70% of the wealth of Namibia was in the hands of 5% of the population and that 1/3 of the population of 2.1 million was classified as poor.
38. Regarding the rights of Namibians to express their opinion, to associate and to exercise freedom of conscience, Mr. Ya Nangoloh indicated that these violations were not carried out by state institutions but by political party functionaries in the name of the ruling party. He indicated that although the police said that they were investigating the cases that were reported to them, the perpetrators have not been arrested. Mr. Ya Nangoloh explained that Namibia has a wonderful Constitution incorporating a Bill of Rights and had ratified a number of international human rights instruments; the problem was the domestication of these instruments. However with the exception of the Geneva Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, the domestication of the rest remained a challenge.
39. Regarding the rights of women and children, Mr. Ya Nangoloh informed the delegation that his organization was requested by the Ministry of Women and Children to comment on the Child Protection Bill. He indicated that the Bill was still in the drafting stage and hoped that it would be tabled in Parliament the following year. He noted that it was a concern that almost twenty (20) years after independence, Namibia does not have a law to protect children. He further indicated that gender based violence against women and children was widespread. In addition, harmful traditional practises such as polygamy still occurred despite the fact that the Constitution of the country provides that Namibia was a monogamous society.
40. HIV/AIDS, malaria, TB, and Cholera were prevalent in some parts of the country such that infant mortality rate in children under the age of five (5) had increased from two hundred and seventy (270) in 2003 to six hundred and fifty (650) currently. He also explained that hunger and poverty were serious problems in the country such that he did not think that Namibia will reach any of the United Nations Millennium Development Goals (MDGs) in 2015. He further indicated that Namibia ranks around one hundred and twenty-five over one hundred and twenty six (125/126) in the UN Human Development Index.

41. On education, the delegation was informed that the education system was problematic and that there was no state funded pre-primary education even though the Constitution provided for free education at that level. There was severe shortage of books, classrooms and properly trained teachers. The delegation was also informed that sixty percent (60%) of teachers were threatened by HIV/AIDS. The government has now adopted a World Bank driven mechanism to improve the education sector but noted that this was just in theory. The delegation was further informed that there was a severe problem of lack of funding for education. He said even though twenty-five percent (25%) of the national budget went to education, seventy five percent (75%) of this budget was used to pay salaries of senior officials in the Ministry of Education and only twenty-five percent (25%) went to schools and teachers. Other serious challenges in the education system included the high percentage of dropouts and the high rate of teenage pregnancy in schools.
42. Mr. Ya Nangoloh informed the delegation that the doctrine of “presumption of innocence until proven guilty” was not always respected. In this regard, he mentioned the “Caprivi” high treason trial had been going on since 1999 and offenders had been awaiting trial in custody for more than eight (8) years. He referred to this as a travesty of justice. He stated that all the accused persons had been tortured, yet the court was continuing to hear evidence on the merits of the case without first ruling on the admissibility of evidence obtained through torture. According to him, fifteen (15) accused persons in that trial had died in custody. He further stated that the administration of justice was “in shambles” citing ill-trained magistrates and judicial officers, poorly trained police officers and the poor quality of investigation of cases as reasons for overcrowding in detention centres.
43. On the issue of the need for political tolerance in the run up to elections, Mr Ya Nangoloh’s opinion was that the Electoral Commission of Namibia did not do enough to promote tolerance. He stated as an example, the fact that the members of the Electoral Commission did not do much to ensure that the electoral code of conduct was respected by political parties. He decried the fact that there were no specific penalties in law for the violation of the Electoral Code of Conduct. According to him, the Electoral Commission “dances to the tune of the ruling party”. He indicated that in 2008, a political party was prevented from holding a rally and no action was taken against its members. Further that a talk show programme called the “National Chat Show” was banned on State radio because it was said that people used the show to insult the former President, although no evidence to this effect was provided.
44. On indigenous people, Mr Ya Nangoloh informed the delegation that the SAN people were the most disadvantaged group in the country and had no voice in society. Although there was one representative from each group of

indigenous people in the National Assembly, the government only recognises the indigenous people who supported the ruling party. Further that due to the system of proportional representation that the country applied, there was lack of accountability of Members of Parliament (MPs) to their constituencies.

45. Mr Ya Nangoloh stated that there was lack of separation of powers between the executive and legislatures because sixty-seven percent (67%) of MPs were cabinet ministers. Out of seventy-two (72) MP's, forty-seven (47) were cabinet ministers. He further stated that although Articles 45 and 32(2) of the Constitution provided that the executive was accountable to the legislature, in practice, the situation is the other way round. The result of this was the absence of checks and balances, and this pointed to the lack of accountability.
46. Mr. Ya Nangoloh also drew the delegation's attention to the fact that traditional leaders belonged to the ruling party and were therefore not independent. They are appointed by the President and approved by the legislature which consisted of sixty-seven percent (67%) of the ruling party.
47. Commissioner Tlakula highlighted that there had been a noticeable absence of NGO's from Namibia at the sessions of the African Commission and asked why NSHR had not been attending the sessions even though it enjoyed the observer status. Mr. Ya Nangoloh in response indicated that, as far as donors were concerned the NSHR was the most independent and most vocal NGO in Namibia. The government he said has discouraged some of its donors not to fund the NSHR because it was critical of government.

### **Meeting with the Media Institute of Southern Africa (MISA)**

48. The delegation met with the Regional Director of MISA, Mr. Kaitira Kandjii and his team. Commissioner Tlakula explained the mandate of the African Commission and the purpose of the mission. She thanked MISA for the support it continued to give her mandate as the Special Rapportuer of Freedom of Expression and Access to Information in Africa. The Regional Director welcomed the delegation and indicated that African Commission had been working with MISA and has built a long standing relationship. He noted that some of the improvements in Zimbabwe in the area of freedom of expression were as a result of the efforts of African Commission. Commissioner Tlakula was interested to know about freedom of expression in Namibia particularly in the run up to the 2009 elections.

49. MISA informed the delegation that Namibia had one of the smallest media industries in Southern Africa due to the size of the population. It indicated that there were three (3) main daily newspapers, two (2) of which were private and one (1) government owned. The government own the Namibian Broadcasting Corporation (NBC) and nine (9) radio stations. There was only one private TV station and fifteen (15) commercial radio stations in Namibia, out of which only one (1) carried current affairs programmes. Most of the commercial radio stations were owned by whites and concentrated on entertainment and had only one slot for news, which is mostly relayed from the 'Voice of America'. He noted that as a result of this the State still dominated the airwaves, in so far as access to information is concerned. Only community media tried to carry current affairs programmes but it is hampered in this regard by lack of capacity and resources.
50. The delegation was informed that the NBC was still a State broadcaster which was owned and controlled by the State through the Minister of Information and Communication who was responsible for appointing the members of the Board of the NBC. The delegation was further informed that the new Communications Bill will replace the Namibian Broadcasting Cooperation with a new body but concern was expressed about the independence of this new body.
51. Other concerns that were expressed about the Communications Bill included the following:- that the Bill provided for the interception of communication but did not provide oversight mechanisms for this; that the law was vague in so far as it failed to state the activities that would result in interception, that it did not provide a limit on the period of surveillance, that it provided for the establishment of surveillance centres at the expense of cell-phone service providers, resulting in a high burden being put on these institutions and that the Bill did not make it compulsory for a judge to be approached before any surveillance could be carried out because it provides that the " judge may be" instead of "must be approached".
52. On elections, MISA explained that the opposition parties complained that they were not getting coverage from the NBC in the run up to elections. Out of the three (3) main daily newspapers only, "The Namibian" covered politics. According to them "The Republican" newspaper was owned by Afrikaans speaking people and mainly covers Afrikaans political parties. "The New Era" newspaper was owned by government, "The Weekly Sun" was partly owned by "Media 24" and "Windhoek Observer" which they characterised as a weak newspaper. There is also "The Yellow Paper" known as "The Informed" which was a tabloid.

53. MISA further explained that during elections, the ruling party dominated the airwaves. Further that "The Namibian" could play a significant role in the election but was being put under pressure by the ruling party. In this regard, the delegation was informed that the newspaper ran a text messaging programme on popular topics and that the government was unhappy with the programme because it felt that the programme was used to decampaign the ruling party. As a result, the operating hours for the programme had been limited and it only operated at night.
54. According to MISA, there was no media policy in Namibia and as a result there was no clear direction by the government on the type of media it would like to see in the country. This has resulted in a situation where profit motives overrode every aspect of media policy formulation. The delegation was further informed that there was no legislation prohibiting political parties from owning media houses. As a result, the ruling party SWAPO partly owned the pay TV channel called "Energy FM". Further that the owners of the newspaper called the "Windhoek Observer" also had links with the ruling party.
55. The delegation was informed that there is no harassment of journalists in Namibia but that there was a selective invitation of private media to State functions.
56. The delegation was also informed that although criminal defamation law still existed in the statute books, it had not been used to prosecute journalists. However that business people often instituted civil defamation proceedings against the media and were often awarded large sums of money as damages by the courts.
57. On the issue of gender in the media, MISA noted that in comparison with other countries in the region, Namibia was not doing too badly in terms of coverage of women. "The Namibian" covered a lot of gender issues. However, that commercial radio stations did not put any effort in this regard. MISA informed the delegation that it will be monitoring the coverage of women candidates and women issues in general, particularly those of rural women in the run up to the 2009 elections. On the issue of ownership of the media by women, the delegation was informed that almost all media houses are owned by men with the exception of "The Namibian" newspaper, which had women in its ownership structure.
58. Regarding the representation of women in the newsrooms, the delegation was informed that the conditions in media houses were not conducive to women and there were very few women who were employed as senior journalists. According to MISA, all senior journalists in "The New Era", "The Republican", "The Sun" and "The Namibian Press Association" were men.

The exception being The Namibian, where there were a few women who were employed as senior journalists.

59. On Access to Information, MISA informed the delegation that there was no Access to Information legislation in Namibia and that the Constitution did not have access to information provision. The National Information Policy that was developed in 2007 proposed that the Constitution should be amended to include access to information. However, that the policy had not yet been adopted. A survey conducted by MISA showed that there was total ignorance regarding the access to information laws in Namibia. According to the survey, one hundred percent (100%) of young people and eighty percent (80%) of journalists did not understand what access to information was. Even MPs questioned the need for an access to information law.
60. MISA indicated that there was a meeting in Angola three years ago on the development of access to information. One of the outcomes of that meeting was on access to information model law which would be used by countries in the region to draft access to information laws in line with international legal instruments and good practice. MISA explained that it was currently carrying out awareness programmes on access to information.
61. Commissioner Tlakula mentioned that there were many initiatives on access to information especially in West Africa and perhaps all the countries in Africa should come together to adopt guidelines on access to information. MISA informed the delegation that it formed a coalition whereby all the media organizations will meet in October 2009 to establish what to push forward in the 2011 Declaration on Access to Information in commemoration of the 20<sup>th</sup> anniversary of the Windhoek Declaration.

#### **Meeting with the Namibia Non-Governmental Organization Trust-(NANGOF)**

62. The delegation met with the Executive Director of NANGOF, Ms. Anna Beukesand and Mr. Samuel Mayinoti, the Capacity Building Officer.
63. The Executive Director highlighted the work of NANGOF, as the umbrella body which coordinates the work of NGOs working in the area of human rights and democracy, health, social and economic justice, gender, environment, rural and urban development, training and capacity building.
64. NANGOF informed the delegation that they had a membership of sixty (60) organizations but worked with all civil society organizations (CSO's)



including non-members of NANGOF. The organisation performed a facilitating or co-coordinating role to enable human rights organizations to identify key human rights priorities in the country and to speak with one voice.

65. NANGOF explained that since 2009 which was the elections year in Namibia, the organization had established the NANGOF Trust Election Coalition, comprising of five (5) organizations which specifically looked at the Elections Act and made comments on it. The organization will also conduct voter education to raise voters' awareness. The delegation was also informed that the Coalition will monitor and observe the coming elections and that since MISA was part of the Coalition, it would concentrate on the media and elections. NANGOF reiterated that the issue in the coming elections was the need for a level playing field for all political parties contesting the elections.
66. The Executive Director highlighted the importance of human rights in Africa and the importance of States' ratification of human rights instruments. She thanked the delegation for visiting the organization and appreciated the work of the African Commission in the promotion and protection of human rights in Africa.

#### **Meeting with the Namibia Press Agency (NAMPA)**

67. The delegation met with the Manager of the Namibian Press Agency Editorial Services, Mr. Chris Shipanga and his team, which comprised of the head of Marketing and Business Development, Mr. Sam Kadhikwa and the head of Financial Administration, Ms. Heinelie Armstrong.
68. After explaining the mandate of the African Commission and the purpose of the mission, Commissioner Tlakula wanted to know inter alia NAMPA's view on the new Communications Bill, the new Media Ombudsman, what role NAMPA played in the coming elections in terms of ensuring equitable coverage of all political parties contesting the elections, NAMPA's role in educating the public on the elections and whether the Electoral Commission trained journalists for elections coverage.
69. Mr Shipanga explained the work of NAMPA by stating that it was the national news agency of Namibia, established by an Act of Parliament in 1992. He said the organization had provision for fifty-four (54) staff but currently, there were thirty-two (32) staff members, adding that NAMPA did not have representative in all the regions in Namibia. He explained that the mandate of the agency was to gather information and distribute news and picture services and to educate and inform the public in an unbiased way.

They also had local journalists who wrote about local events. NAMPA informed the delegation that it was State funded and did not necessarily go out of the way to criticize government but reported matters factually. So far, they have not had any problems with government about their work.

70. On the role of NAMPA in the elections, the delegation was informed that the organization will ensure maximum and equal coverage of all parties contesting the elections. It had come up with various initiatives such as setting up an election desk, assigning journalist who will cover all political parties especially in areas where commercial newspapers did not reach and ensuring full coverage of all political parties. NAMPA indicated that there were complaints by opposition parties but it was for the organization to respond to them in a responsible manner.
71. On the new Media Ombudsman, NAMPA indicated that it was a good initiative and hoped that the Ombudsman would establish a code of conduct to be observed by the media during elections.
72. On the coverage of women candidates by the media, NAMPA noted that there was no official policy on this matter. However that the majority of its reporters were women and would ensure that women candidates were well covered in the media. Furthermore on the role NAMPA played in educating the public on the elections, it stated that there were daily bulletins concerning elections. NAMPA also emphasized that it provided news but it depended on the radio or broadcasting agencies that subscribe to it regarding what was reported to the public. It said that there were some challenges such as lack of adequately trained reporters and lack of financial resources adding that there was room for improvement.
73. On the issue of the Electoral Commission training the journalists, NAMPA responded by saying that recently training was conducted for the NBC only and not for other media houses.

#### **Meeting with the Namibia Legal Assistance Centre (NLAC)**

74. The delegation met with Project Lawyer, Mr. Zeka Alberto and his colleagues. After explaining the mandate of the African Commission and the purpose of the mission, Mr. Zeka Alberto and his colleagues informed the delegation that the NLAC was a public interest law centre working in the areas of land conservation, the environment, mining and developments and how these impacted on the human rights of the people, HIV/AIDS and human rights, prisons, police, gender advocacy, children's rights and human rights and constitutional litigation.
75. Mr Alberto explained that there were various units in the Centre dealing with various human rights issues. The AIDS Law Unit dealt with HIV/AIDS

from a human rights perspective and with violations of the rights of people living with HIV/AIDS. The AIDS Law Unit is currently dealing with a case of a HIV/AIDS infected woman who was sterilized without her consent.

76. The delegation was also informed that the Human Rights and Litigation Unit dealt with any human rights abuses, for example: - prisons, police refugees etc, and the Gender and Advocacy Unit deals with issues of gender and children's rights. There was also a Civic Education Unit which educated people on their rights.
77. He further said that the NLAC also edited and compiled the Namibia Law Reports. As far as cases were concerned, the paralegals screened cases and distributed them to the appropriate lawyers for action. He indicated that due to lack of funding, the Centre only dealt with public interest cases and other cases were transferred to other institutions for consideration.
78. Mr. Zeka noted that the NLAC once took a case to the International Court of Justice after exhausting all local remedies in Namibia, of a man who wanted to use his wife's surname and the case was successful.
79. Finally Mr. Zeka expressed concern that in the past, they met with representatives of the African Commission when they were on a mission on indigenous people in Namibia but had not received any feedback from the Commission on the outcome of this mission.

### **Meeting with the University of Namibia (UNAM)**

80. The delegation visited the Faculty of Law of the University of Namibia and had discussions with the Dean of the Faculty of Law, Prof. Nico Horn and his colleagues.
81. During the meeting, Commissioner Tlakula wanted to know the kind of programmes the Faculty of Law offered that aimed at promotion and protection of human rights, and how the Faculty worked with government in the promotion and protection of human rights. Commissioner Tlakula also wanted to know the Dean's views on public service broadcasting in terms of how its board was appointed, the new Communications Bill and allegations that Magistrates were poorly trained.
82. The Dean began by informing the delegation that the University offered a course in Human Rights Law where students were taught the African human rights system and also had the opportunity to participate in the African Moot Court. He explained that for the University, emphasis on the African system was very important.

83. He said the government ratified the Protocol on the Rights of Women in Africa and a Bill was drafted to domesticate the Protocol but was never passed. He explained that the Bill outlawed polygamy and the Namibian people were very critical of it and were of the opinion that it was drafted to please the Western countries. The Dean noted that when women stand up for themselves African men blamed it on “white communists”.
84. On access to information, the Dean explained that there was a private TV station which broadcasted news as well as international news channels. He said as far as freedom of expression is concerned, it was one of the least problems in Namibia. He said that during elections, the major problem is that the ruling party did not allow the other parties to assemble freely at certain places. He said there was a kind of balance now with the creation of a channel called “One Africa”, which is a critical broadcasting agency but the State broadcaster still dominated the airwaves.
85. On the new Communications Bill, the Dean explained that a group of intellectuals met once a month to discuss topical and controversial issues such as this Bill which, in his opinion was recently passed despite many objections from the public. He said that most people wanted the provision on the “interception of communication” to be amended to make it compulsory for government agency wanting to intercept any communication to obtain a warrant before it could do so.
86. On the appointment of magistrates, the Dean explained that after independence, all magistrates were appointed by the Minister of Justice and this was challenged on the basis that it compromised the independence of the magistracy. The Magistrates Commission was then established tasked with the responsibility, amongst others, of appointing magistrates. The Dean further informed the delegation that the Magistrates Commission had made a recommendation to the Minister of Justice for the dismissal of a magistrate and the minister did not accept the recommendation. The Magistrates Commission had applied to the court for a mandamus to dismiss this magistrate. The matter was still pending.
87. Regarding the allegation that the magistrates were poorly trained the Dean informed the delegation that the three months training programme for new magistrates was inadequate. Further that the best magistrates in the country were Zimbabweans. He highlighted as a further problem, the low turnover rate of senior magistrates, this leading to lack of space for the promotion of junior magistrates to senior positions and prosecutors to the magistracy.

### **Meeting with the Polytechnic of Namibia**

88. At the Polytechnic of Namibia, the delegation met with the Vice Rector, Dr. Gert Gunzel, Mr. Stephaney's Nambili, a lecturer in Legal Studies and Ms. Emile Brown, the Head of Department of Media Technology.
89. Commissioner Tlakula explained the mandate of the African Commission and the purpose of the mission. She wanted to know the human rights courses that the polytechnic offered, what contributions the Polytechnic made towards human rights awareness in Namibia and what the Polytechnic was doing to ensure that women were involved in the elections.
90. Ms. Emile Brown, informed us that she taught a course on journalism. She indicated that with effect from 2010, the Polytechnic will offer a degree in Criminal Justice. Currently only a course on Police Science was offered.
91. Mr. Nambili taught Labour, Company and Commercial Law. He informed the delegation that the Labour Act of 2007 established the Wage Commission which became operational in 2008. The Wage Commission provided for a minimum wage for farm workers. In addition to this, section 28 of the Act required the employers of farm workers to provide accommodation for their employees alternatively, to make accommodation costs part of the wages of these employees. Furthermore, the Act required employers to pay farm workers extra food rations or to give them a piece of land where they could cultivate food.
92. The Vice Rector informed the delegation that although the Basic Conditions of Employment Act stipulated a minimum wage of N\$ 9 per hour, the Chinese employers paid as little as N\$3 per hour and no action was taken against them. Further that the prescribed minimum wage in sectors such as building and farming was also ignored by employers with impunity. According to the Vice-Rector, implementation of the provisions of these laws were not monitored and evaluated.
93. The Vice Rector also informed the delegation that the Labour Act also provided for the establishment of Conciliation and Arbitration Boards and provided for the establishment of labour inspectors that were supposed to visit employment places to check compliance of employers with the law. After the visit, labour inspectors are supposed to compile a report and where there was non-compliance, give the offending employer 30 days to rectify the violation.
94. The Vice Rector stated that in his opinion, trade unions were far too strong in Namibia. He said that Namibia had an excellent Constitution and good laws, taking into account that it gained independence only nineteen (19) years ago. He noted that the main challenge was accessibility and

awareness of these rights and implementation, monitoring and evaluation of the laws.

95. On the contribution that the Polytechnic made towards human rights awareness, the delegation was informed that recently the Office of the Dean organized a cultural festival in which the Polytechnic students from all the five (5) countries bordering Namibia participated. The delegation was also informed that in commemoration of World Aids Day, the department of Media Technology developed jointly with media houses, a Media Action Plan for HIV/AIDS awareness and training of journalists. The department also conducted research on the “glass ceiling” in media houses, in the light of the fact that women only constituted 17% of news sources in Namibia and 18% of news sources in the SADC region. In addition, the department also conducted workshops for media houses on gender and the media.
96. Ms. Brown further informed the delegation that the government was in the process of reviewing its policy on the trafficking of women and the department was conducting base line studies in human trafficking particularly, in the run- up to the 2010 FIFA World Cup to be held in South Africa. The delegation was also informed of other awareness initiatives that the department was involved in such as the “No tobacco day”, “Blood donation day” and “HIV/AIDS testing day.”
97. On the involvement of the Polytechnic in the elections, Ms. Brown informed the delegation that in the run up to the last elections the department piloted the first campus news agency by dispatching students to conduct focus group research in all thirteen (13) regions of the country, to hear from the people what their views were on various issues. The study found that what people wanted from the government was quite different from what the elected representatives offered. This study, according to Ms. Brown, gave a voice to the voiceless. The delegation was also informed that in preparation for the 2009 elections, a similar study will be conducted and the study will concentrate on issues such as gender, leadership, governance and HIV/ADIS. The study will be conducted in partnership with organizations such as NAMPAs and Gender Links. The delegation was further informed that although fifty-four (54%) of students were women, the Student Representative Council (SRC) was dominated by male students.
98. On the question of gender equality generally, the Vice Rector informed the delegation that in Parliament there is suppose to be a 50:50 representation of women and men. However that the SWAPO Youth League had more women than men and the League comprised of the Polytechnic and University of Namibia students, yet women were not represented in the Executive. In the field of journalism, there was a belief that women would

not practice as journalists because they needed to take time off to take care of their children. He said women went home to a stressful and old fashioned type of male dominated homes even though sometimes, they were educated and were bread winners of the household. He noted that culture had brought a lot of problems in Africa and this brought about racism in the world. He further said that laws had forced people to be aware of their differences when “our similarities far out weighed our differences”.

### **Meeting with the Leader of the Opposition**

99. The delegation met with Mr. Ben Ulenga, a Member of Parliament (MP) and the President of the official opposition party, Congress of Democrats (COD).
100. After explaining the establishment and mandate of the African Commission, Commissioner Tlakula informed the leader of the opposition of the purpose of the mission.
101. Commissioner Tlakula wanted to know inter alia, the opposition’s view on the human rights situation in Namibia, and whether the COD was satisfied with the preparations of the Electoral Commission for the elections. She also enquired if there was equitable coverage of contesting parties in the media during elections.
102. In his reaction, Mr. Ulenga indicated that Namibia was an open and accessible democracy. He said however that there were complaints of human rights violations due to the historical context. He indicated that in theory there was commitment to human rights but in practice there was still a challenge. He explained that his party did not document human rights violations.
103. He said in the past ten years, there had been alleged disappearances and deaths in custody. He indicated that ten (10) years ago, there were attempts by some people in some region to secede and these people were arrested. However, to date the State had not made any progress in the case. He indicated that the opposition was free to raise any concern including in Parliament without any reprisals. He also indicated that there was a case of some refugees from DRC whose legal position was uncertain, and in the end they were taken to the boarder of Namibia and Botswana by the government. He informed the delegation that there was a deadlock between the government and the United Nations High Commission for Refugees on the plight of these refugees. He indicated that according to reports, it appeared that Botswana had agreed to grant these refugees asylum.

104. On the elections, which he indicated, were two months away, Mr. Ulenga indicated that elections were generally peaceful in Namibia but expressed concern regarding the violation of the rights to freedom of expression and association of persons who supported parties other than the ruling party. In this regard, he gave an example of a cabinet minister who threatened a relative who supported a different political party from his with a gun. He indicated that the incident was reported in the media and the said cabinet minister did not deny it yet no action was taken by the police. This incident, Mr. Ulenga stated, pointed to the fact that people who were supposed to be custodians of the Constitution violated it with impunity.
105. The delegation was informed that there was a controversy on how political parties should conduct their campaigns. Traditionally, the following types of campaigns were used, rallies, house/hall meetings, door to door campaigns and walkabouts. There was a view expressed by the Commissioner of Police that door to door campaigns should not be allowed. This he indicated was a concern to smaller parties who relied on door to door or house meetings campaigns. In his opinion, all forms of campaigning should be allowed provided the rights of others were respected.
106. Mr. Ulenga also informed the delegation about the perceived intimidation of voters by the ruling party. According to him, recent polls that were conducted indicated that 30% of the electorate were either undecided about a party they will vote for or did not want to disclose publicly a party they will vote for. This according to him, pointed to the fact that people were scared to disclose the party they supported.
107. The delegation was informed that with the political will and proper organization, the country was capable of holding peaceful, free and fair elections. In addition that the SADC protocol on elections should be observed.
108. Mr. Ulenga also indicated that there was a need for the government to apply transitional justice for some people who were in exile during the liberation struggle and who were regarded as spies against SWAPO. According to him, some of these people died in detention or disappeared in exile. Attempts by family members of those who died in exile to find closure had not been successful. As a result they formed an organization called Breaking the Walls of Silence (BWS) to address their concerns. Mr. Ulenga further informed the delegation that two weeks ago, a cabinet minister announced that these people qualified for the benefits that the war veterans were entitled to, in terms of the War Veterans Act and he regarded this announcement as positive.



109. On the arrangements the Electoral Commissions had made for the elections, Mr. Ulenga, said that the Commission had a history of perceived partiality. He noted that in the past the Commission was part of the Prime Minister's Office and after various complaints, it became independent. He indicated that the Chairperson of the Commission was an open and known member of the ruling party and this was a concern to the other parties. Further that there have been cases brought against the Commission by the opposition and the opposition won. He indicated that the Electoral Act had been amended to allow the ballot papers to be counted at each station on the same day and this would go a long way to improve transparency. However the Electoral Commission had set up many mobile stations when they knew that the opposition could not deploy party agents at every mobile station and this was likely to affect the transparency of the electoral process.
110. He said the Electoral Commission called political parties to attend meetings to brief them on the electoral process late in the process when major decisions had already been taken. He explained that in Namibia parties were not allowed five hundred (500) meters near polling stations. He noted that because the ruling party SWAPO was big and dominant, people were afraid to challenge it because of fear that they will loose their jobs and there was high rate of unemployment.
111. On equitable media coverage of political parties contesting the election, Mr. Ulenga said that the NBC was seen as a mouth piece of SWAPO and decided how much coverage each party got. He indicated that there was no statutory body that monitored how the NBC operates. He said that although there was an Act of Parliament establishing the NBC, there was no law that regulated its operations during elections.
112. On the use of State resources by the ruling party for campaigning purposes, Mr. Ulenga informed the delegation that the ruling party did use State resources such as vehicles for campaigning by cabinet ministers belonging to the ruling party to the disadvantage of opposition parties. He gave as an example the letter that was written by the ruling party to various municipalities requesting them to make donations for a fund-raising dinner organized by the ruling party. He indicated that after opposition parties complained about the abuse of State resources by the ruling party for campaigning purposes, a decision was taken to give every Member of Parliament a monthly allowance for transport.
113. Regarding political party funding, the delegation was informed that each political party that was represented in Parliament received funding proportional to the number of votes it received in an election. The fund was administered by Parliament and that about eighty-three percent (83%) of the funding went to the ruling party.

114. On indigenous people, the delegation was informed that there were indigenous people in the country and that most of them suffered many violations of human rights such as poverty as a result of which they cannot keep their children in school and high mortality rates, especially amongst children. The delegation was also informed that the opposition parties had raised these concerns with government, which has tried to address some of these concerns, however that a lot still needed to be done.

### **Meeting with the Electoral Commission of Namibia**

115. At the Electoral Commission of Namibia, the delegation met with Mr. A. N. Elago, the Director of Electoral Operations.
116. After explaining the mandate of the African Commission and the purpose of the mission, Commissioner Tlakula wanted to know inter alia, about the preparation of the elections in Namibia, the Commission's view on the alleged lack of independence of the Commission, the procedure for the appointment of Commissioners, where ballot papers were printed and counted and the Commission's view on the mobile stations.
117. In his response, Mr. Elago, stated that the forth coming elections were to be held in November 2009 and the preparations had reached an advanced stage. He said that there was a need to overhaul the Electoral Act of 1992, which was drafted with great speed and went through eight (8) amendments. These amendments were meant to address shortcomings in the Act. He indicated that the last amendment was passed in August 2009 and was meant to ensure great accessibility of voting stations by voters.
118. He indicated that the members of the Commission served on a part-time basis and that the new Director of Elections was appointed towards the end of 2008. The delegation was also informed that there were thirteen (13) regions and one hundred and seven (107) constituencies in the country. Further that the Commission employed twenty (20) full-time staff members, all based in Windhoek, thirteen (13) regional co-coordinators who were assisted by two (2) assistant coordinators per region, who were responsible for voter education. In addition, the Commission employs three thousand (3000) ad hoc staff for the elections. Mr. Elago informed the delegation that some of the challenges facing the Commission in the coming elections include the following; lack of adequate resources, coordination and conducting of voter education, and the growth in multi-partism, with more than ten (10) political parties likely to contest the elections.

119. On the perceived lack of independence of the Commission, he said when the Electoral Commission was established in 1992, it was under the office of the Prime Minister. From 1997, the Commission became independent. Although members of the Secretariat of the Commission are public servants, they were under the direction and supervision of the Commission.
120. On the appointment of the Commissioners, the Directors view is that the appointment procedure for the Commissioners and Director should be re-examined. He explained that the post of Director was advertised by the Secretary to the National Assembly. The interviews are conducted by the Commissioners and they recommended three (3) names to the President who appointed one (1) person who must also be endorsed by Parliament. As far as appointment of Commissioners is concerned, the Director advertised the positions and the interviewing panel consisted of one (1) representative from each of the following institutions, High Court, Ombudsman's office, Law Society etc. The panel recommended eight (8) names which the Director sends to the President. Out of these the President appoints five (5) as Commissioners. The names of five (5) persons must be endorsed by Parliament. The Chairperson of the Commission is elected by the Commissioners amongst themselves.
121. On vote counting and printing of ballot papers, Mr. Elago stated that for the first time, the new amendment to the Electoral Act provided for counting of ballot papers at the voting stations. He said that previously, the ballot papers were printed in England and South Africa. After the question of the high cost of printing was raised by the opposition, the ballot papers were now printed in Namibia. He indicated that historically, three (3) of the printing companies had links with the ruling party. When the bid for the printing of ballot papers were advertised, some bidders did not meet the requirements and others did not have the required capacity. He noted that the printing company that was awarded the bid to print the ballot papers had links with SWAPO, (the ruling party) but the printing process would be monitored by the police and political parties.
122. On the mobile stations, Mr. Elago stated that the law provided for the establishment of mobile polling stations even on voting day but this had not been done before. He indicated that for this election, mobile polling stations will be established but they will not cover more than three (3) places.
123. Regarding the financial independence of the Commission, the delegation was informed that the Commission was not accountable to any line ministry and its budget was defended by the Speaker of Parliament. Regarding amendments of electoral laws, the Director informed the delegation that the amendments were tabled in Parliament by the Minister of Regional, Local Government, Housing and Rural Development.

## **Meeting with the Deputy Commissioner of Prisons**

124. At the Ministry of Safety and Security, the delegation met with Mr. Tuhafeni Hangula, Deputy Commissioner of Prisons and Mr. John. W. Nyoka, the Deputy Commissioner (Special Advisor) and National Coordinator of Namibian Community Service Orders.
125. Commissioner Tlakula explained the establishment of the African Commission and the purpose of the mission. She informed Mr. Hangula and Mr. Nyoka that prisons and other places of detention were important institutions in the promotion and protection of human rights. She said the delegation was interested to know the measures that the government had put in place to ensure the protection of the rights of prisoners, the successes as well as the challenges faced by prison authorities in carrying out their functions.
126. The Deputy Commissioner informed the delegation that the prison capacity nationally was four thousand four hundred and seventy-five (4475) but there was a total of four thousand four hundred and twenty-eight (4428) inmates in the whole country. He indicated that the management of prisons was made difficult by overcrowding particularly in the Northern parts of the country, where some prisons were up to seventy percent (70%) overcrowded, mainly with prisoners serving short-term sentences. He informed the delegation that with the funding provided by the French government, they started a pilot project on community service as an alternative to custodial sentence. The project started in 2003 with the sensitization of people on community service. It then proceeded in five (5) courts in four (4) regions in the North which were experiencing overcrowding with prisoners who are serving sentencing for minor offences that are poverty related. Further that funding for the project had come to the end, and after the evaluation of the project, there was an intention to extend it to all the courts in the four (4) regions.
127. On HIV/AIDS in prisons, Mr. Hangula, said this was a big challenge because when new prisoners come in, their HIV status was not known and they cannot be forced to test. He explained that there was a voluntary testing service available to prisoners and the prison service cooperates with the Ministry of Health to provide free Anti-Retroviral Drugs (ARVs) and counseling to prisoners that were infected with HIV. As a result of this, the death rate had decreased.
128. On sodomy in prisons, Mr. Hangula indicated that he did not think that it was a big problem in Namibian prisons. He said the few cases that had been reported, the culprits were punished. He indicated that there was a

recent case of sodomy in which the victim sued the State for damages but unfortunately the case was dismissed because it was instituted after the expiry of the one (1) year prescription period. The delegation was also informed that there was one case of sodomy that was pending in court.

129. On the issue of the availability of contraband such as dagga (Marijuana) and gangsterism in prison, the delegation was informed that the prison services had adopted the system of Unit Management in terms of which inmates were classified and divided according to the risk that they posed. In addition, the new correction strategy had been adopted and these initiatives had assisted in decreasing criminal activities, including violence. Furthermore, that the introduction of the Correctional Services and Rehabilitation Programme had also assisted to address the problem of re-offending.
130. He said there is also an Independent Parole Board which makes recommendations to the Minister or Commissioner of Prisons. He explained that there were two (2) types of parole boards one dealing with offenders serving less than two (2) years imprisonment and the second dealing with offenders serving more than two (2) years imprisonment. He said that with the present system, prisoners usually served their sentences without being granted parole. Therefore that a new law would be enacted soon to establish one board. He indicated that there were also prisoners who were released on medical grounds.
131. The delegation was also informed that there was one (1) maximum prison in Namibia and that there was no female prison in Namibia but female sections in various prisons. Further that female offenders who had babies were allowed to keep the babies with them until they were two (2) years old. Recently there were sixteen (16) children in Walvisbay prison. The delegation was also informed that there was no juvenile prison in the country and there were very few juvenile offenders in Namibia but in prisons where they were, they were kept separately from adult offenders.
132. Regarding prison visit, the delegation was informed that judges of the High Court visited prisons once a month. Furthermore, that NGO's, Members of Parliament including those representing opposition parties were also allowed to visit prisons. In addition to this, the Ombudsman also had a mandate over prisons and trained prison officials on human rights. The Deputy Commissioner also informed the delegation that prison officials who assaulted prisoners went through a disciplinary process.
133. On the representation of women in the prison service, Mr. Hangula indicated that the National Commissioner and the two Deputy National Commissioners were men and one (1) of the two (2) Assistant Commissioners is a woman. However that most Social Workers in prison

are women and the Chief Chaplin was also a woman. He however noted that there was currently a restructuring exercise taking place and hopefully more women would be appointed to senior positions in the prison service.

### **Visit to Walvis Bay Prison & Swakopmund Prison**

134. The Delegation visited Walvis Bay Prison and Swakopmund Prison. Prior to visiting the two prisons, the delegation met and held discussions with heads of both prisons at each prison and other prison officials.
135. After explaining the establishment of the African Commission and its mandate, Commissioner Tlakula informed the officers of the purpose of the mission. She further informed the officers that prison and other places of detention are important institutions in the promotion and protection of human rights and as such she is interested to know what measures have been put in place to ensure the protection of the rights of prisoners. Commissioner Tlakula said that she would like to know what are the successes and challenges prison authorities face in the execution of their functions. She added that the delegation would like to visit the prison premises and inspect some of the cells and other facilities.

### **Walvis Bay Prison**

136. In Walvis Bay Prison, the Officer in Charge explained that it is a medium institution built in 1984 with three sections. The government took over in 1994 after liberation and since then there has been no renovations. He informed the delegation that in January 2009, the prison officers took the initiative to renovate the prison with government funds and made use of some of the prisoners to do the work.
137. The delegation was informed that there were one hundred and fourteen (114) prison officials, fifty-one (51) female and sixty-three (63) male. Further that twenty-four (24) new officials, which include three (3) nurses and two (2) social workers are in the process of being recruited.
138. On the prison capacity, the delegation was informed that the prison has a capacity for three hundred (300) inmates but that there were three hundred and thirty-two (332) locked up inmates, comprising of three hundred and sixteen (316) sentenced male inmates, twelve (12) female sentenced inmates, one (1) female inmate with a 7month old baby who was born in prison and is suffering from TB. The delegation was further informed that the prison was divided into several sections and inmates are fed porridge, milk and tea for breakfast, bread and butter for lunch and pap, vegetables

and meat for super. Rice was only served to inmates who are on a special diet.

139. On rehabilitation and recreation, the delegation was informed that social workers provided counseling to prisoners in consultation with their families and also prepare reports for the institutional committees. The Office of the Ombudsman also visited the prison every three (3) months to take complaints from inmates. The delegation was further informed that inmates were trained on needlework and had formed five (5) choirs which had musical instruments and organized music events. In addition, the prison also organized the "International Family Day" for inmates.
140. On HIV/AIDS, the Officer in Charge informed the delegation that the prison had links with Health Clinics and that voluntary HIV/AIDS testing is conducted very Wednesday and inmates who tested positive were referred to these clinics for treatment. He also informed the delegation that an NGO called the "NAWA Life Trust" conducted HIV/AIDS awareness through sports. Furthermore, that the Multi-Purpose Centre also conducted AIDS awareness programmes and that the prison was represented in the Regional and District AIDS Committee.
141. On education of prisoners, the officer in charge informed the delegation that there were short computer courses for all inmates at the Multi Purpose Centre and six (6) literacy classes and six (6) literacy promoters. In stage one (1) there were forty-eight (48) inmates, in stage two (2), there were thirteen (18) and in stage three (3), there were ten inmates. There were also seventeen (17) inmates at Upper Adult Education level. The delegation was also informed that some inmates were enrolled with the Namibia College of Education and five(5) inmates were in grade ten (10) and three (3) in grade twelve(12). Two (2) female inmates were enrolled at the Southern Business School for diplomas in Human Resources Management and Business Management respectively. One (1) male inmate was studying for a diploma in Accounting and Finance with the Namibian Polytechnic. Further that all inmates wrote their examination in prison which had been accredited as an examination centre.
142. Regarding the right of inmates to religion, the delegation was informed that most inmates belonged to the Christian faith and attended church in prison on Sundays. Further that there was a Bible school which offered a course through distance learning and that six (6) inmates studied Theology with the Namibian Institution of Technology.
143. The Officer in Charge informed the delegation that there were no escapes and no known cases of sodomy and torture in the prison. However that gangsterism exists and that contraband was often found and three inmates were caught with dagga (Marijuana).

144. He further informed the delegation that inmates served sentences for crimes such as theft, shop lifting, rape and murder and that three(3) female inmates served sentences for drug related offences, one(1) for house breaking and theft and one(1) was awaiting trial. Further that there were foreign inmates from Angola, Congo, and Zambia.
145. After meeting with the prison officers, the delegation visited the prison facilities, including the cells, vocational facilities, kitchen etc.
146. The prison had a garden where prisoners produced food for their consumption. Other activities included carpentry and craft work. In section A, prisoners had facilities such as televisions and radios in their cells. The cells were equipped with beds, mattresses, pillows and blankets. The kitchen was clean with electric cooking facilities.
147. The delegation was informed that inmates working in the kitchen were tested for HIV/AIDS very six (6) months, and they were in separate quarters, equipped with television, radio, beds, mattresses, pillows and blankets. They were also paid a small amount of money for their work. There is also a dinning hall with tables and chairs, a hospital with two screening rooms and the patients were separated from the rest of the inmates.
148. Section A of the prison was overcrowded but in a reasonable condition. Section B, where long term offenders are kept, the cells were equipped with beds, mattresses, blankets and pillows. The cells had entertainment facilities such as television sets and radios and the delegation was informed that inmates were only qualified to listen to radio after they had served three months in prison.
149. In Section C, the inmates were former police officers, government officials and students. They stayed in single cells with toilets and had television and radios in the cells.
150. In the Female Section, each inmate has a single cell with toilets. There was one female inmate with a seven (7) month old baby. The inmates also had entertainment facilities such as televisions and radios.
151. There were no juvenile offenders at the time of the visit. However there were two (2) eighteen year old male inmates who were isolated for safety reasons. Awaiting trial prisoners were incarcerated separately. Generally the prison was clean and the prisoners seemed at ease, and played in the musical band and danced to the music.

### **Swakopmund Prison**



152. At Swakopmund Prison, the delegation met with Chief Prison Officer Axakhoeb E, the Acting Officer in Charge. He informed the delegation that the building was built in 1909 and was declared as a national monument in 1973 but it is still used as a prison. He noted that the building would turn one hundred years of existence in September 2009.
153. He indicated that the Swakopmund prison was a minimum security prison which was built to accommodate ninety-two (92) inmates and caters for sentenced male inmates serving short-term sentences, ranging from ten (10) days to three (3) years. At the time of visit, there were seventy-six (76) inmates of whom three (3) were juveniles and three (3) were foreigners from South Africa and Congo. He further said that there are forty (40) officers out of which of twenty-one (21) were females including a Nurse and nineteen (19) were male.
154. He explained that there was a small but effective garden at the back of the prison where a selected number of well behaved inmates planted vegetables under the supervision of prison officers. He said a large amount of fresh vegetables were produced for use and to supply the Walvisbay Prison when the need arises.
155. The delegation was informed that the prison officers underwent human rights training by the Office of the Ombudsman and the Legal Aid Centre.
156. After meeting with the prison officers the delegation visited the prison facilities, including the cells, vocational facilities, kitchen etc.
157. The delegation visited the garden, which was very impressive with a lot of vegetables. In Section A, the kitchen was clean with electric cooking facilities. The Officer in Charge said that the prisoners were served bread, beans, potatoes and porridge. The prison also had a Clinic which provided treatment to prisoners and at the time of the visit, there were four (4) patients. The Officer in Charge explained that the seriously ill prisoners were transferred to the public hospital next door to the prison. He said there were cases of HIV/AIDS and they were provided with ARV's free of charge. He also indicated that the prison had facilities for HIV testing.
158. In Section B of the prison, the adult prisoners were kept separately from juveniles. Each cell was equipped with beds, mattresses, blankets and pillows.
159. The Officer in Charge indicated that some of the problems they have in the prison were leaking water pipes and taps which affects their monthly water bills. This he said was due to the fact that the pipes were very old and were installed at the time the building was built almost one hundred years ago.

160. The delegation was also informed that there were no escapes and known cases of sodomy at the prison. Further that there was no contra-ban and no reported cases of torture of inmates by officers.

### **Meeting with the Ombudsman**

161. The delegation met with the Ombudsman, Adv. John R. Walters. After explaining the establishment and mandate of the African Commission, Commissioner Tlakula informed the Ombudsman of the purpose of the mission to Namibia. She said the African Commission was mandated to promote and protect human rights in Africa and conducted these kind of missions to meet with government and other stakeholders, to discuss the situation of human rights in the country in particular, the successes and challenges States Parties faced in meeting human rights duties and obligations under the African Charter. She informed the Ombudsman that the African Commission conducted a mission in 2001 on prisons and another mission in 2005 on Indigenous populations.
162. The Ombudsman on his part informed the delegation that his office comprised of the Ombudsman and the Deputy Director who were both legally qualified and sixteen investigators who were mainly police officers. He indicated that he had motivated for the appointments of a legal officer responsible for human rights education.
163. He explained that previously his office had a mandate in three (3) areas, namely human rights, protection of the environment and corruption. However that corruption was now dealt with by the Anti-Corruption Commission. He further indicated that although the majority of the complaints he received dealt with maladministration, there was a shift to human rights issues and his office was accredited with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and obtained an A status in 2006.
164. On the budget for his office, the Ombudsman expressed concern that his budget was not enough to cover his broad mandate. Furthermore that he received his budget through the Minister of Justice.
165. He indicated that the Office of the Ombudsman was working on a booklet on the Conventions Namibia had ratified and the various concluding observations of the different UN Committees. He added that Namibia had not ratified CEDAW because it had difficulties with the provision that allows individuals to lodge complaints with the Commission's complaint body.

166. On the human rights issues in Namibia, the Ombudsman said that conditions of detention, mainly police cells for awaiting trial prisoners were very poor, adding that although there were improvements, a lot of work still needed to be done. The detention cells were mainly overcrowded with almost forty (40) detainees sharing one toilet. He attributed overcrowding to amongst others, the high amount of bail that accused persons had to pay, which he said could be as high as N\$ 4000.00, for driving under the influence of alcohol. He noted that there were no plates or cutlery to eat with, and sometimes there was neither food nor drinking water in some detention centers. He explained that he has held discussions with the Ministry of Safety and Security that the situation could be improved. For instance he made a recommendation that remand centres should be built.
167. On conditions in prisons, he indicated that he had no complaints about prisons generally, although the conditions are not perfect. He explained that the problems prisons were faced with were lack of adequate accommodation, inadequate uniform for prison officials and absence of promotion for prison officials. He noted that the amount of money prison officials received for housing loan was not even enough to buy a piece land.
168. The Ombudsman informed the delegation that eighty percent (80%) of the complaints he received related to maladministration and twenty percent (20%) to human rights violations that the latter related mainly to the violation of the right to a fair and speedy trial. As far as administration of justice was concerned, the delegation was informed that in so far as review of cases was concerned, delays were occasioned by the fact that the record of proceedings was not placed before a judge within seven (7) days as stated in the rules of procedure of the Supreme Court. He also expressed concern regarding the finalization of the “Caprivi” case which he indicated, had been running for six (6) years.
169. He indicated that there was the need to train magistrates and judges on human rights and that his office was working hard to ensure that every citizen knew their rights. He added that the budget allocated for the work of the Office of the Ombudsman needed to be reviewed to enable the office to execute its mandate. Finally, he informed the delegation that his office was in the process of developing the National Human Rights Action Plan which he hoped, would be adopted and submitted to the United Nations in 2011.

### **Meeting with the Law Society of Namibia**

170. At the Law Society of Namibia, the delegation met with the Director of the Law Society of Namibia, Ms. Retha Steinmann.

171. After explaining the establishment and mandate of the African Commission, Commissioner Tlakula informed the Director of the purpose of the mission to Namibia. Commissioner Tlakula wanted to know the work of the Law Society and the role it played in the promotion and protection of human rights.
172. The Director informed the delegation that the Law Society was a statutory body mandated to regulate legal practice in Namibia. She indicated that the society had four hundred and eighty (480) members of which twelve (12) were overseas. Two hundred and fifty (250) members were in practice, thirty-two (32) as advocates, fifteen (15) government attorneys, and twenty (20) prosecutors. She indicated that the Law Society had a Disciplinary Committee which dealt with disciplinary matters of its members.
173. Asked what the view of the Law Society was on the new Communication Bill which the delegation was informed, was likely to be unconstitutional, she indicated that they had no issue with the Communications Bill but the National Intelligence Act or the Spy Bill as it was called was the problem. She also stated that the Financial Intelligence Act was also problematic because according to the Act, the Law Society was the supervisory body and its members were not satisfied with the impact it is likely to have on attorney/client privilege.
174. She said that in the past, government used to consult the Law Society on various issues, but because of the huge work load the office had to deal with, there was no time to deal with certain issues. She went on to say that the office was trying to hire a Professional Affairs Manager who will deal with the legal work and other issues.
175. On prisons and places of detention, she informed the delegation that three (3) years ago, the members of the society visited prisons, to check the conditions. On the issue of creating awareness on various laws she indicated that the Law Society issued pamphlets on various legal matters and the most recent one the office was working on was an information leaflet on the Labour Act. The Society has also issued pamphlets on the Motor Vehicle Act and Debt Collection. She said depending on the contents of the pamphlet, the office distributed it to various stakeholders such as its members, the police and prosecutors.
176. According to the Director, the Law Society had a formal continuing legal education programme for its members.
177. Asked whether training was provided to members on Constitutional Litigation, the Director indicated that in the light of the obligations placed on its members by the Financial Intelligence Act, they concentrated on training

members and employees of the banks on the Act and did not have time to conduct other training programmes, Finally he informed the delegation that the Society awards bursaries to law students through the Attorney's Fidelity Fund.

### **Meeting with Government Institutions**

178. Due to the public holiday on 26 August 2009 to celebrate, "Heroes Day" the delegation could not meet with government departments individually, therefore a joint meeting was organized with representatives of different government departments.
179. The representatives of the following departments attended the meeting, Ministry of Justice -Attorney General's office, Ministry of Education, Ministry of Health, Law reform Commission and the Office of the Prosecutor General.
180. Commissioner Tlakula introduced the delegation and explained the mandate of the African Commission and purpose of the mission. She said that the African Commission in a bid to promote and protect human rights in Africa was mandated to undertake promotional missions to meet with government and other relevant stakeholders, to discuss amongst other things, the situation of human rights in each country looking at the success and challenges States Parties were faced with in meeting their duties and obligations under the African Charter.
181. She indicated that the delegation had met and held discussions with various NGOs and Civil Society Organizations working in the field of human rights in Namibia and she would like the government departments present to explain what measures the government had taken to promote and protect human rights in Namibia.
182. The representatives of the various government departments headed by the Ministry of Justice welcomed the delegation and apologized for the absence of senior official whom the delegation could not meet because of the Heroes Day Celebrations.
183. The representative from the Ministry of Justice informed the delegation that there were three (3) divisions in the Ministry and one of them dealt with Human Rights and was responsible for the compilation of State Reports. He said there was an Inter-Ministerial Committee chaired by the Permanent Secretary which dealt with human rights issues. He indicated that as far as State Reporting was concerned, the Committee did not incorporate NGOs in the process, but only line Ministries dealing with human rights issues.

184. He explained that Namibia submitted their last Periodic Report in 2001. He further explained that after drafting the reports, the Inter-Ministerial Committee made comments on the reports and it was then submitted to Cabinet for approval and finally to the Ministry of Foreign Affairs for dispatch. He said the challenge faced was the implementation of Concluding Observations and indicated that there was no mechanism for dealing with them as well as the coordination on the report writing process.
185. The representatives of the various government departments informed the delegation that as far as crime was concerned, the government had enacted the Criminal Procedure Act, Magistrates Act and the High Court Act. They further highlighted other pieces of legislation and institutions such as the Money Laundering Act, Corruption Act, the Anti-Corruption Commission and the Ombudsman's office who deal with cases relating to maladministration.
186. On the justice system, the representatives indicated some of the problems the criminal justice system was facing, aspects of which were outdated. They indicated that there were shortages of judges and experienced magistrates and that there were no sentencing guidelines for the judges and magistrates. Further that this resulted in disparities in sentencing. Accused persons were often not informed about their rights and the possible sentences for the offence they had committed. The representatives further indicated that investigations were not carried out on the social circumstances of the offender before sentencing. The representatives noted that all these problems undermined the public confidence in the administration of justice.
187. The representatives however noted some of the initiatives government had put in place to enhance the justice delivery system. These include the introduction of a Justice Training Centre for continuous training of magistrates and prosecutors. There was also a programme for the training of university students to become magistrates after they completed their degrees. The government had also established an Institutionalized Training Centre in Swakopmund to train judges and magistrates. The delegation was also informed that the Namibia Justice Network which is a web based training guide was established, to guide magistrates on how to approach bail applications and other legal issues and also provides them with precedents, various laws and research.
188. On the "Caprivi" trial, the representatives said that the trial was ongoing, noting that the number of prosecutors need to be increased to speed up the trial.

189. On Indigenous populations, the representatives of the various government departments indicated that, with regards to the San people, in order to address the problem they are faced with, the government under the Office of the Deputy Prime Minister had introduced a number of Programmes including the establishment of mobile schools. In terms of land, government had introduced resettlement programmes for them. In the areas of health, the government had built Clinics in rural areas to allow greater access to medical treatments.
190. On gender based violence, the representatives informed the delegation that the Married Persons Equality Act had been enacted to give effect to the SADC Protocol on Gender and Development. The representatives also indicated that there was a final draft of the Child Protection Bill which will hopefully be adopted soon. In addition, the Child Development Bill has also been drafted which would address child development. According to the representatives, the Bill contained provisions for the establishment of a Children's Court, an Advisory Council and a Children's Ombudsman. A simple language version of the Bill had been published in newspapers for the public's comments. Workshops and training programmes had also been initiated throughout the country, to solicit the comments of teachers and pupils on the Draft Child Protection Bill. The delegation was also informed that there were projects on the empowerment of women.
191. The representatives informed the delegation about overcrowding in police cells and explained that the problem was exacerbated by the fact that illegal immigrants were detained in police cells and have to go through the court process since the law does not make provisions for paying fines on the spot. What worsened the situation was the fact that deportations can only be handled by the immigration tribunal and that there was only one tribunal situated in Windhoek. Further that there were a lot of illegal immigrants from Zimbabwe, Angola, Nigeria and Democratic Republic of Congo. The representatives however the government's efforts in introducing a course for government officials to be trained on Refugee Law at the University of Namibia, adding that currently Namibia and Botswana are having bilateral talks on the Congolese refugees.
192. The representatives said that the concerns expressed on the Communications Bill were unfounded, noting that they are based on selective reading of the Bill and that the Bill had to be read carefully to be understood.
193. One of the issues that the representatives indicated that was hotly debated was polygamy. The representatives indicated that the legal position was that customary marriages were recognized. The Law Commission is harmonizing the two marriage legal systems and intends to abolish polygamy. The Constitution indicated that a customary marriage

was recognized provided it did not conflict with the Constitution further that a customary marriage will be recognized if it is registered. The representatives indicated that the abolition of polygamy will not work, adding that the decision should be left to the two parties getting married to decide on the type of marriage they want to enter into.

### **Press Conference**

194. Commissioner Tlakula held a Press Conference attended by the local press in particular NAMPA, “The Windhoek Observer”, “The New Era” and “The Republican” newspapers.

### **ACHPR’S OBSERVATIONS AND ANALYSIS**

195. The mission of the African Commission lasted for four days and the delegation was able to meet a cross section of relevant stakeholders working in the field of human rights in the Namibia. The African Commission is therefore satisfied that the meetings held with the government officials, NGOs, institutions and the government have given a general idea of the human rights situation in Namibia.
196. This section of the report will analyse the human rights situation in Namibia and make observations based on the meetings and discussions held with the different stakeholders. The analysis will be made under the following headings:
  - Freedom of Expression and Access to Information;
  - Prisons and Conditions of Detention;
  - Elections
  - Gender Equality and Children’s Rights;
  - Indigenous Population
  - Administrative Justice System
  - The Law Enforcement Agency and the Promotion and Protection of Human Rights;
  - Namibia’s international human rights obligation;

### **Freedom of Expression and Access to Information**



197. From the information gathered, freedom of expression is not a problem in Namibia and there are no cases of harassments, intimidation and arrest of journalists. The African Commission notes the government's efforts in establishing a Media Ombudsman, which is independent and deals with the issues relating to the media. However it is observed that there is no Access to Information legislation in Namibia. Regarding the Communications Bill, the African Commission appreciates the government's efforts in enacting this Bill. However almost all of the institutions and NGOs that the delegation met with, expressed concerns about the "Interception of Communications" provision in the Bill, which does not make it compulsory for a court order to be sought before a communication could be intercepted.

### **Prisons and Conditions of Detention**

198. The African Commission recognises the government's efforts to improve the prison conditions in Namibia, and the introduction of various programmes meant to reduce overcrowding in prisons and re-offending problem. The African Commission notes the introduction of the Community Service as an alternative sentence for prisoners serving short-term sentences, Rehabilitation Programmes and the establishment of a single Independent Parole Board.
199. The African Commission also notes the satisfactory conditions at both Walvisbay and Swakopmund Prisons but both prisons need renovations. Shortage of uniforms and inadequate accommodation for prison officials, overcrowding in police detention centres, large number of awaiting trial prisoners, delays in bail applications and delays in finalising police investigations are all sources of concern.
200. Various initiatives to address HIV/AIDS in prisons are appreciated.

### **Elections**

201. The African Commission is satisfied with preparations for the 2009 elections but notes that there is room for improvement in the area of free political participation, peaceful campaigning for all political parties contesting the elections and equitable coverage of all the political parties by the State media, in particular, the State broadcaster. In addition, there is a need to regulate the usage of State resources by the ruling party, for campaigning purposes.

## **Gender Equality and Children's Rights**

202. The African Commission notes that the representation of women in some structures of governance, such as Parliament and senior positions in prison services is not satisfactory and is below the SADC and AU standards. Furthermore, the African Commission notes that the issue of polygamy is far from being resolved despite the provision of the Constitution to the effect that Namibia is a monogamous society. On the other hand, the African Commission welcomes initiatives such as the enactment of the Married Persons Equality Act to address some of the challenges.
203. Regarding the rights of children, the African Commission notes with concern the fact that more than fifteen (15) years after independence, Namibia does not have legislation that protects children. In this regard, the Child Protection Bill is welcomed.

## **Indigenous Populations**

204. The African Commission notes the initiatives that the government is taking to address the situation of indigenous people, including appointing the Office of the Deputy Prime Minister as a focal point in this respect, resettlement programmes and provision of mobile schools. However the social and economic situation of indigenous communities, in particular poverty, remains a major challenge.

## **Administration of Justice in Namibia**

205. There are several challenges facing the administration of justice in Namibia. These challenges include the following: case backlog occasioned amongst others by the shortage of magistrates and judges and poor quality of investigations conducted by police; shortage of experienced and properly trained magistrates and poorly trained police officers. In addition to these, disparities in sentencing as a result of absence of sentencing guidelines and failure to present cases for review to a judge within the prescribed period are some of the concerns that have to be addressed in the administration of justice.
206. The African Commission also notes that at times, police officers obtain confessions through torture and often do not inform suspects of their rights before effecting arrests.

## **The Obligation of Namibia in terms of International and Regional Instruments**

207. The Republic of Namibia has ratified a number of international and regional human rights instruments; including the African Charter on Human and Peoples' Rights. Despite Namibia's ratification of these instruments, Namibia has not ratified the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights and the African Charter on Democracy, Elections and Governance.
208. The African Commission observes that Namibia has not submitted its Periodic Report since the year 2000 in accordance with Article 62 of the African Charter. The African Commission also notes that the government of Namibia and NGOs with observer status have not been attending its sessions, although most of the NGOs have attributed their failure to attend the sessions to lack of funding.

## **Conclusions and Recommendations**

209. The Republic of Namibia has made considerable progress in the promotion and protection of human rights since it gained independence. However, the African Commission notes that there are still a number of challenges that the country still needs to address.
210. The African Commission notes the following positive factors in the promotion and protection of human rights:-
- i. The introduction of the Child Protection Bill and the Child Development Bill, which provides for the establishment of the Children's Court, an Advisory Council and a Children's Omdubsman is welcomed;
  - ii. The existence of plural media in Namibia. Further, that there has not been any reports of harassment and intimidation of journalists. The African Commission also appreciates the fact that although the criminal defamation laws still exist, it has not been used to prosecute journalists. The African Commission further welcomes the appointment of an Independent Media Ombudsman who will regulate the affairs of the media;
  - iii. The establishment of the Wage Commission and the enactment of the Labour Act of 2007 which is meant to improve the working conditions of employees, including the farm workers is also welcomed by the African Commission;

- iv. The various initiatives of Namibia Polytechnic in the promotion and protection of human rights, which include gender awareness in the media, the research it is conducting in various areas of human rights, including human trafficking;
  - v. The reasonable conditions in the prisons visited and the piloting of community service as an alternative to custodial sentences for minor offences. In addition, the availability of voluntary testing facilities for HIV/AIDS in prison, the provision of ARV's to prisoners free of charge and the existence of HIV/AIDS awareness programmes in prisons are also appreciated;
  - vi. The adoption of the Unit Management System and the introduction of Correctional Services and Rehabilitation Programmes to decrease criminal activity in prisons is appreciated. The African Commission further appreciates other recreational programmes offered such as education, music and religion;
  - vii. The decision to establish a single Parole Board that will streamline the parole system;
  - viii. The African Commission notes with satisfaction that the Office of the Ombudsman and the Legal Aid Centre conducted human rights training for prison officials;
  - ix. The drafting of the National Action Plan for the Promotion and Protection of Human Rights by the Office of the Ombudsman and hopes that the Plan will be submitted for adoption with the relevant United Nations agency;
211. The ACHPR notes the following as areas of concern in the promotion and protection of human rights:-
- i. The absence of a law dealing with gender based violence and violence against children, including the continued practice of polygamy in violation of the Constitution of the country;
  - ii. Failure by the State to domesticate the African Protocol on the Rights of Women in Africa and failure to ratify the Charter on Democracy, Elections and Governance and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples Rights;
  - iii. The prevalence of diseases such as Malaria, TB, Cholera and HIV/AIDS in some parts of the country and the increase in child mortality rate;

- iv. Failure to make pre-primary school education free as provided for in the Constitution and the shortage of books, classrooms, properly trained teachers and adequate funding for learning and teaching. The high rate of dropouts and teenage pregnancy is a further challenge;
- v. The abnormal delay in the finalisation of the “Caprivi” high treason trial and the allegation that the accused persons in this trial have been subjected to torture;
- vi. Lack of well trained magistrates and police officers resulting in delays in finishing cases, which in turn leads to overcrowding in detention centres;
- vii. Absence of political tolerance and free political activity in the run up to the 2009 elections. Absence of legal sanctions for the failure to comply with the Electoral Code of Conduct and inequitable coverage of opposition political parties by the State media in the run up to the elections are other areas of concern;
- viii. Domination of the airwaves by the State radio, particularly in favour of the ruling party in the run up to the 2009 elections and failure to transform the State broadcaster into a public service broadcaster;
- ix. The situation of indigenous people in the country, in particular their socio-economic conditions, including poverty and their inadequate representation in various structures of governance,
- x. Lack of separation of powers, particularly between the legislature and the executive which compromises accountability;
- xi. The constitutionality of the Communications Bill so far as it fails to make it compulsory for obtaining a court order before communications could be intercepted;
- xii. Lack of power of the Magistrates Commission to dismiss Magistrates where appropriate;
- xiii. Lack of Access to Information provision in the Constitution of the country and of Access to Information legislation;
- xiv. Failure to implement the provisions of the Basic Conditions of Employment Act to ensure that the minimum wage provision is applied by all employers;
- xv. The absence of a body that regulates and monitors equitable coverage of all political parties contesting an election and the absence of a law that

regulates the use of State resources by the ruling party for campaign purposes;

- xvi. The conditions of some prisons, particularly in the northern part of the country;
  - xvii. The state of repair of Swakopmund Prison which was a hundred (100) years old and was in need of renovations;
  - xviii. The lack of uniforms and adequate accommodation for prison officials;
  - xix. Inadequate human and financial resources for the Office of the Ombudsman to enable it to execute its mandate effectively and the fact that the Office of the Ombudsman, unlike the Electoral Commission that receives its budget directly from Parliament receives its budget through the Ministry of Justice. This is likely to compromise the independence of the office;
  - xx. The failure by the government to implement the recommendations of the mission that was conducted by the Special Rapporteur on Prisons and Places of Detention in Africa in 2001;
  - xxi. The failure to implement the recommendations of the mission of the Working Group on Indigenous Populations/Communities in Africa that the African Commission undertook in 2005;
  - xxii. Failure by the State to submit its periodic reports to the African Commission in terms of Article 62 of the African Charter, since 2000;.
  - xxiii. The absence of mechanisms for the implementation of the concluding observations and recommendations made in the periodic and mission reports of the African Commission and other treaty bodies and the absence of an effective process to coordinate the State report writing process and to involve civil society organisations in the process.
212. The African Commission makes the following recommendations to the government of Namibia:-
- xxiv. To speed up the enactment of the Child Protection Bill which is meant to protect the rights of children in the Republic of Namibia;
  - xxv. To domesticate the Protocol on the Rights of Women in Africa and to ratify the Charter on Democracy, Elections and Governance and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights;
  - xxvi. Enactment of legislation that addresses gender based violence;

- xxvii. To enhance its health sectors to reduce the prevalence of diseases such as Malaria, TB, Cholera and HIV/AIDS in some parts of the country and to take measures to decrease the child mortality rate;
- xxviii. To ensure pre-primary school education is free as provided for in the Constitution and make adequate provisions for books, classrooms, properly trained teachers and adequate funds for learning and teaching;
- xxix. To expedite the “Caprivi” high treason trial and to investigate the allegation that the accused persons in this trial have been subjected to torture;
- xxx. To provide adequate human rights training for magistrates and police officers;
- xxxi. To provide legal sanctions for the violation of the electoral code of conduct and ensure equitable coverage of all political parties by the State media in the run up to the 2009 elections;
- xxxii. To transform the NBC from a State broadcaster to a public service broadcaster;
- xxxiii. To improve the situation of indigenous people in the country, in particular their socio-economic conditions, including poverty and ensure that they are adequately represented in various structures of governance;
- xxxiv. To facilitate amendments to the Communications Bill to protect privacy rights and the Child Protection Bill to include children in armed conflict, to ensure they are in line with human rights standards;
- xxxv. To extend the powers of the Magistrates Commission to enable it to dismiss Magistrates when appropriate;
- xxxvi. To provide for Access to Information provision in the Constitution of the country and to enact an Access to Information legislation;
- xxxvii. To implement the provisions of the Basic Conditions of Employment Act to ensure that the minimum wage provision is applied by all employers;
- xxxviii. To establish a body that regulates and monitors equitable coverage of all political parties contesting an election and enact a law that regulates the use of State resources for campaign purposes;
- xxxix. To improve the conditions and overcrowding in prisons, particularly in the northern part of the country; by reducing minimum sentences to community service and to proceed with the enactment of the law for one Parole Board;

- xl. To renovate and repair Swakopmund prison which was a hundred (100) years old;
  - xli. To provide adequate uniforms and accommodation for prison officials;
  - xlii. To provide adequate human and financial resources for the Office of the Ombudsman and ensure its independence;
  - xliii. To implement the recommendations of the mission that was conducted by the Special Rapporteur on Prisons and Places of Detention in Africa in 2001;
  - xliv. To implement the recommendations of the mission of the Working Group on Indigenous Populations/Communities in Africa that the African Commission conducted in 2005;
  - xlv. To submit its periodic reports to the African Commission in terms of Article 62 of the African Charter, since 2000;
  - xlvi. To establish mechanisms for the implementation of the concluding observations and recommendations made in the periodic and mission reports of the African Commission and other treaty bodies and establish an effective process to coordinate the State report writing process.
  - xlvii. To involve civil society organisations in the report writing process of its Periodic Reports to the African Commission;
213. The African Commission urges Non-Governmental Organisations with Observer Status to attend the Sessions of the African Commission.