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**ABBREVIATIONS**

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

CSO - Central Statistics Office

EC FUND – Employees’ Compensation Fund

EPZ – Export Processing Zone

FAO – Food and Agriculture Organisation (of United Nations)

GDP – Gross Domestic Product

GNP – Gross National Product

HDI – Human Development Index (of United Nations Development Programme)

HDR – Human Development Report

HRDC – Human Rights and Documentation Centre (of Faculty of Law, University of Namibia)

ICESCR – International Convention on Economic, Social and Cultural Rights

ICJ – International Court of Justice

ILO – International Labour Organisation

LAC – Legal Assistance Centre

MOHSS – Ministry of Health and Social Services

MSD – Maternity Leave, Sick Leave and Death Benefit Fund

NDP – National Development Plan

NGO – Non-Government Organisation

NHDR – Namibia Human Development Report (of United Nations Development Programme)

UNAM – University of Namibia

Nbc – Namibia Broadcasting Corporation

## **INTRODUCTION**

Namibia is a State party to a number of Conventions and Treaties commonly referred to as International Human Rights Instruments including the African Charter on Human and People's Right. Namibia ratified the African Charter on 30 July 1992. The list of major instruments, are listed in Annex I hereto.

This report is submitted pursuant to Article 62 of the African Charter on Human and People's Rights, which requires each state party to submit a report every two years on legislative or other measures taken with a view of giving effect to the rights and freedoms recognise and guaranteed by the Charter. The information contained in the report covers the period from 2002 until 2009. According to Article 62 of the Charter's reporting schedule, Namibia's periodic reports after she submitted the 2<sup>nd</sup> periodic report in 2001 they were due in 2004, 2006, and 2008. Namibia welcome the position of the Commission to accepts that the 3<sup>rd</sup> periodic reports of Namibia which was due since 2004 but only submitted in 2010 be combined with the , 4<sup>th</sup> , and 5<sup>th</sup> periodic reports.

The report consists of the introductory section which includes information on the reporting methodology; it then provides information and responses to the African Commission's concluding observations and their recommendations which they made following their visits to Namibia during 2000 and 2005 respectively. Part I of the report contains a brief description of the general legal framework within which the civil and political rights are protected. Part II of the report provides information on the substantive rights recognised under relevant articles of the Charter and the measures taken to implement them.

## **REPORTING METHODOLOGY**

In order to meet and respect her international obligations, Namibia established an Inter-Ministerial Committee on Human Rights and International Humanitarian Law, which consists of all Ministries the nature of whose mandate implicates human rights issues. The operations of the Committee are coordinated by the Ministry of Justice. This report was prepared and compiled by the Ministry of Justice based on information received from all Government Ministries, research information and reports from relevant non-governmental organizations (NGO's).

## **CONCLUSIONS AND RECOMMENDATIONS FROM THE AFRICAN COMMISSION**

From the above, the Working Group on Indigenous Populations/ Communities recommends that the African Commission adopts the following conclusion and recommendations:

This Report presents a narrative account of discussions between the delegation of the African Commission's Working Group on Indigenous Populations/ Communities in Africa and major stakeholders working to protect the rights of indigenous populations in Namibia. It is the view of the African Commission that the mission succeeded in establishing dialogue between the African Commission, the government of the Republic of Namibia, the local civil society organizations and the indigenous communities themselves. The main aim of the mission was to work with all stakeholders to enhance the human rights situation of indigenous communities in the country. Approaches to achieving this might be different but through dialogue, the African Commission believes a common ground could be found.

The African Commission notes the positive initiatives taken by the government of the Republic of Namibia to promote and protect the human rights of indigenous populations in the country such as free education to indigenous groups, training programmes, etc. The Commission however believes that there

is room to do more and calls on the government to intensify its programmes and policies aimed at enhancing the rights of indigenous populations.

The African Commission makes the following recommendation which it hopes will be implemented by the Government as a first step towards advancing the rights of indigenous communities in the country. The recommendations are made with due regard to the measures already taken by government to enhance the welfare of indigenous populations in the country and bearing in mind the socio-economic and political situation of the country and with the understanding that the African Commission would be available at all times to support the government in their implementation. The recommendations also keep the gateway of dialogue between the African Commission and the Government of the Republic of Namibia open.

## **EDUCATION**

The Commission appreciates the effort being made by the government to provide free education to the San as education is the catalyst to development. The poverty, marginalization and low life expectancy of the San can only be address if they are informed through education. However, the government should provide the San with sufficient educational support that would enable them make informed decisions about their development and the development of their future generations. It is not sufficient to provide them with free education up to grade 10 and abandon them. The government should make further sacrifices and provide the San with free education at least up to Grade 12 level. The government should ensure that the policy of free education for San learners is respected and implemented.

Those San learners who fail Grade 10 Examinations should be supported by the Government to repeat and those who drop out from school should be encouraged to return or provided with vocational training that is relevant to the economic development of the country. Vocational training should also be introduced for Grade 10 drop-outs and others unable to proceed to grade 11 to avoid wastage of human resources.

The government should provide mother tongue education for all San pupils up to grade 3 and train San teachers to teach them. Grade 10 drop outs could be trained to be mother tongue instructors in their communities.

Complaints about discrimination and stereotypic utterances against San learners should be thoroughly investigated and punished. The government should criminalize discrimination in all forms but in particular based on race or ethnicity in accordance with Article 4 of the Convention of the Elimination of all Forms of Racial Discrimination and Article 2 of the African Charter on Human and Peoples' Rights.

## **TRAINING**

The government should provide agricultural training to those San members who wish to engage in either crop or cattle farming or both. In Mkata, the residents complained about members of some other ethnic community refusing to plough for them rendering them helpless. They should all be trained on farming techniques and provided with the necessary farming tools and equipment.

## **LAND RIGHTS**

The San should be provided with communal land they can call theirs. Access to land and land security for the San population is the most critical element that should be addressed by the Namibian

government. Land security would greatly facilitate efforts on the part of the government, NGOs, and the communities themselves at addressing their critical health issues, educational and political marginalisation, and numerous social problems. The protection and expansion of land rights is one of the most fundamental interventions that can be made on behalf of the San in Namibia to secure their sustainable livelihood.

## **TRADITIONAL LEADERSHIP AND POLITICAL REPRESENTATION**

The traditional leadership of the San should be recognized by the government. Insisting that a particular ethnic group such as the Khwe San in Western Caprivi be ruled by another ethnic Group, the Mbukushu's is a recipe for disorder and eventually conflict. Government should legislate affirmative action measures to increase the representation of San and other indigenous communities in governance structures such as Parliament, the National Council and local government structures. A quota system could be adopted to give indigenous communities certain percentage representation in these structures.

## **HEALTH**

The government should establish health centres nearer to San communities or ensure that mobile health centres visit these communities on a regular basis.

## **EMPLOYMENT**

The government should encourage the development of income generating activities in and around San communities and give priority to the employment of San members to fill vacancies. The government should ensure that labour laws are enforced so that proper working conditions are ensured for the San.

## **HUNGER**

San communities should be encouraged to grow crops for their subsistence. Those living in Parks should be provided with safe places where their crops would not be destroyed by animals and in the event the crops are destroyed, they should be entitled to compensation from the government.

## **DISCRIMINATION**

The government should ensure that acts of racial discrimination are dealt with in accordance with internationally recognized instruments such as the African Charter, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on Elimination of all Forms of Discrimination Against Women. The government should also establish sensitisation programmes for civil servants on issues relating to anti-discrimination, particularly with regard to the San and other indigenous peoples.

## **RECOGNITION OF INDIGENOUS PEOPLES**

The government should ratify the ILO Convention 169 on Indigenous and Tribal Peoples. The government should further include recognition and protection of indigenous peoples in its constitution and in national policies that affect the lives of the San and other indigenous peoples in Namibia. Where necessary affirmative action should be considered.

## RESPONSE TO THE ABOVE RECOMMENDATIONS:

The Namibian Government welcomes the Commission's proposal and looking forward to work together with the Commission for the betterment of the living conditions of indigenous communities in our country.

Since independence, the government has resettled the San people to permanent locations and built houses for them across the country. In 2005, Cabinet approved the San Development Programme. The objective of the programme is to ensure that the San people are fully integrated in mainstream society and economy. A bank account for the San Development Programme was opened with the permission of the Ministry of Finance for budgeting purposes and contribution from donors. The following programmes were undertaken thus far since the inception of the programme:

- Resettlement Programme for San people. The Government has purchased farms, and allocated it to the San people. The Ministry of Land and Resettlement gave them livestock (cattle and goats), some farming implements and trained them in farming techniques to produce food for self sustenance.
- Education for San children; the Government launched the "back to school and stay at school for San children" programme and provides them with scholarships.
- Literacy project for all the San people
- An Early-Childhood Development Centre was established
- Employment opportunities. The National Government has given directives to all Ministries and Regional Governments to apply affirmative action principles in terms of the law to employ the San people. Many of the Ministries including the Ministry of Defence, Safety and Security have relaxed the requirements for employment when employing the San people in the Defence and Police Forces.
- With the assistance of NGO's, the Community Conservancy programme is one of the programmes established for the benefit of San people which have been more successful.
- San Feeding Programme: Due to extreme poverty amongst the San people, the Government introduced feeding programmes for the San Communities on a regular basis.

Parliament has enacted a law, the Traditional Authorities Act, Act 25 of 2000 for all indigenous groups to give recognitions to traditional leaders. The government has recognised more than 43 Traditional Authorities in terms of the Act, and these include also the five San ethnic groups.

Since Independence, the government made a commitment to support minority language education for the first 3 (three) years of school. This commitment was made because of an internationalist perspective on ethnicity fostered by the leadership of the ruling party, SWAPO on their return from exile. Secondly, it was made because of the historical circumstances of separate development during the period of South Africa's illegal mandate over Namibia.

The Government has relocated and continues to relocate and settle the San and Ovatus people to permanent locations, usually with the intention of "civilizing" them and to provide schooling, running water and modern amenities. Unfortunately, and because the San People are hunters and gatherers and lived nomadic lives for thousands of years, this life-style of coercing them to live in settlement areas has not been very successful.

Health issues, income generating activities, and formal employment are part of Government's Development Programme for the San people which started in 2005

In 1991, parliament passed legislations to prohibit racial discrimination, the Racial Discrimination Prohibition Act, Act No 26 of 1991 and Racial Discrimination Amendment Act, Act No 26 of 1998. This legislation prohibits discrimination at the workplace and in public amenities or differentiation and or any discrimination based on race or ethnic origin.

In addition to the above legislation, the following statutes are also applicable in combating racial discrimination in Namibia:

- The Affirmative Action (Employment) Act, Act No 29 of 1998, which provides for the achievement of equal opportunity in employment.
- The Cultural Institutions Act, Act No 29 of 1969, which provides for payment of government subsidies to cultural institutions, and
- National Art Gallery of Namibia Act, Act No 14 of 2000, which provides for the preservation of Namibia's Cultural heritage.

However, despite all these laws being in place we are still facing some challenges of intolerance from certain sections of the society and individuals of the population

Generally speaking, the Namibian Constitution offers various remedies to aggrieved persons under Article 25(2), Article 78 (through the courts), and Article 12 on fair trial.

Namibia was one of the countries that supported the United Nations Declaration on the Rights of the Indigenous Peoples. In addition to the Bantu majority, there are large groups of Khoisan (such as Nama and San), who are descendants of the original inhabitants of Southern Africa. There are approximately 27 000 San people (formally marginalized) in Namibia, but only about 2000 of them still follow a traditional way of life.

Food security and self reliance is a major challenge given the country's vast desert and arid climate. The Government has already responded on food security for the San and other indigenous groups through the San Development Programme

The government has and still trying to relocate and settle the San people to permanent locations, usually with the intention of "civilizing" them and to provide schooling, running water and modern amenities. Unfortunately, this live style of forcing them to live in settlements areas has not been very successful.

## **TO NGOs**

### **Recommendation:**

NGOs should continue and intensify their support to promote the welfare of indigenous communities in the country. NGOs should also work closely with Government and other institutions to enhance the welfare of indigenous communities in the country.

**In response:** the civil society and other NGO's

Namibia is a vibrant democracy where a host of Civil Society Organizations, political parties, donor agencies, and NGO's are active. In the last quarter of 2005, the Government took the first step towards realizing these objectives when the cabinet adopted a partnership policy between the Government and CSOs. The objective was to promote active citizenship through the demonstration of greater Government commitment to civic participation. The policy document states that the realization of this objective requires: an improved environment for partnership; closing the gap between the Government and the people; strengthening civil capacity; and collective responses to existing development challenges and opportunities. This partnership formalise the roles and functions of the civil society sector in the national governance and development processes.

The Shack Dweller's Association had campaigned and worked in promoting access to affordable housing in urban and in rural areas. The Big Coalition (BIG) is a coalition of NGO's that advocate for the state to pay a monthly cash grant of N\$ 100-00 (US\$ 13.60) per month to every Namibian citizen, regardless of age or income. They have launched their own pilot project in Omitara village, which is said to be one of the most impoverished settlements in the country.

The Legal Assistance Centre (LAC) is a public-interest law centre; it works mainly on civil and political rights, and has a great success in promoting and protecting of these rights. It also assist the government in the area of Law reform, particularly provides input to legislation that focuses on gender issues and human rights.

In supporting the Electoral Commission of Namibia, the Civil Society, the media and NGO's play important role during pre-elections and election period by engaging in observation of all aspects of the electoral process in order to facilitate free and fair election accepted by all the participating political parties. The Namibia Institute for Democracy (NID) assists in voter's education initiatives, through the schools, radio programmes, and local news papers

The NamRights Inc (formerly known as National Society for Human Rights (NSHR) is another human rights organization which is vocal and critical against the Government since it was founded in 1989. Some of its objectives are to promote accountability, accessibility and transparency in public administration, and to promote representative and decentralized political power based on active and full public participation.

The vibrant nature of Namibia's social system has given room to woman organizations; such as Women Action for Development (WAD) that prioritizes and promotes women's greater participation in power sharing and general involvement in democracy and electoral processes.

## **TO THE INTERNATIONAL COMMUNITY**

### **Recommendation**

The international community, in particular donors, should support San projects especially the conservancies and support the Namibian government to provide adequate services to San communities.

**In response:**

Civil society organizations such as Working Group of Indigenous Minorities in Southern Africa (WIMSA), the Omaheke San Trust, have worked in diverse field and had taken up the plight and human rights issues of San people very seriously.

**PRISON MISSION****Recommendations**

Complementary information required from the Government of Namibia

The Special Rapporteur wishes to obtain:

Information about the status of implementation of the projects to develop training programmes for members of the forces of order (prison and police)

**In response:**

It is necessary to mentioned that this information was required by the Commission soon after their visit which took place in 2000 and between 2001 until 2009 a lot of development and activities regarding training have been carried out by the line Ministry. The most significant progress is on the way the Namibian Prison Service has adroitly moved into training intended to focus on the core function of Corrections for the reintegration of offenders. Through the hired services of the T3 Associates Training Consulting Inc. experts, Namibia Prison Service is being trained and works on new Offender Risk Management Correctional Strategy which involves Correctional Offenders, Correctional Supervisors, Case Management Officer, and Unit Managers amongst others. This is major single result-oriented training programme which is conducted in phases.

It has always been the tradition of the two line Ministries (including Ministry of Defence) that only those who successfully complete the training programmes will be recruited into the Force. But after they have been employed the Faculty of Law of the University of Namibia offers legal courses to senior officers and the Legal Assistance Centre also has a programme signed with the Police Department to train them in basic criminal law and criminal procedures in Court as well as Constitutional provisions regarding Human Rights. In particular the Prison Service conducts basic training for six months for new members. The Prison Service also has a well- designed Professional training programme on Skills Development in Human Rights issues which is offered two to three times per year for one month.

**Recommendation:**

Information about possible external control mechanisms to monitor cells in police stations

**In response:**

This issue has recently been taken up by the Office of the Ombudsman. They regularly visit police cells and prisons and report to Parliament. Furthermore, the minister of Safety and Security takes the issue of overcrowded police cells and prisons very seriously. He report to cabinet directly as he himself is also visiting the police cells and prisons regularly.

**Recommendation:**

Additional information on current and planned mechanisms to enable the verification of complaints about ill treatment at the hands of prison staff and police

**In response:**

The Office of the Ombudsman is mandated constitutionally to deal with Human Rights abuses especially by Government officials. Nevertheless, the Police have a Disciplinary Unit which deals with complaints relating to the misconduct of Police Officers during the execution of their duties.

Mechanisms to enable the verification of complaints about ill treatment in the hands of prison members is also been addressed by the Prison Authority. They have included in their new proposed law (the Correction, and Conditional Release Bill) a chapter which provide for a Correctional Inspector who shall specifically conduct investigations into the problems and complaints of Offenders related to decisions, recommendations, acts or omissions of Correctional Officers or any other person under the control and management of or performing services for or on behalf of the Commissioner that affect offenders either individual or as a group.

**Recommendation:**

The most precise indication possible about the number of people detained by police (annual population and average population on a given day)

**In response:**

Recent crime statistics of cases reported to the Police during 2007 was about 87 729 cases, and during 2008 it was about 93 438 and during the first two months of 2009 stand at 7 514 cases were reported. These figures exclude cases brought forward from previous years that stand at 126 000. During 2008, there was a total of 35 728 detainees in police holding cells countrywide, as compared to only 32 677 during the preceding year of 2007.

**Recommendation:**

The conclusions of the enquiry concerning the above mentioned death that took place in Walvis Bay prison and the threats against a prisoner who allegedly was a witness to scenes of violence preceding the death of this prisoner.

**In response:**

The threats against a prisoner who is alleged to have been a witness to scenes of violence in Walvisbay prison preceding the death of a prisoner was also investigated by the Ombudsman's Office, but nothing substantial from it.

**Recommendation:**

The conclusions of the autopsy report concerning the demise of Fanuel Heibeb, who died at Hardap Prison in the week preceding the visit of the Special Rapporteur.

**In response:**

The conclusion of autopsy report concerning the demise of Fanuel Heibeb who died at Hardap Prison preceding the visit of the Special Rapporteur was completed, and the findings in respect of the cause of death was pulmonary embolism and heart attack.

**Recommendation:**

Measures recommended by the Special Rapporteur

Apart from the measures already suggested in the body of the report, the Special Rapporteur would like to add or insist on a certain number of recommendations:

**General Recommendations**

Access to legal aid should be improved, particularly by reinforcing jurisdictional assistance and by developing mechanisms of Para-legal aid with the help of the competent NGOs according to the model of what is being done in Malawi.

**In response:**

Legal Aid to assist the Indigent litigants in legal matters (Civil and Criminal cases) is a Constitutional obligation of the State according to the High Court and the Supreme Court decision in the case of Government of the Republic of Namibia and Others v/s Mwilima and all the Other Accused in the Treason Trail 2002 NR 235 (SC), as referred to supra. The Government accepted and respect the decision of the courts; it is now an obligation of the State to provide legal aid to Indigent litigants who cannot afford legal representations of their own.

**Recommendation:**

External controls of detention in prisons and police stations should be strengthened. Visiting justices should use to the full the powers conferred on them by the prison law to contribute towards the improvement of conditions of prisons and police stations.

**In response:**

The Prisons Act, Act No 17 of 1998, provides for the Visiting Justices to be established in each and every region, but it is not very much used by those who are appointed and expected to be visiting justices. However, efforts are being made by Prison Service to sensitize them to do these very important visits. Nevertheless, thanks to the Ombudsman who took upon the issue and made it as one of his major functions to visit the Prisons regularly.

**Recommendation:**

External controls should be increased and the parliamentary committee on safety should visit prisons and police stations regularly. The Ministries of Home Affairs, of Prisons and of Justice should try to collaborate more effectively with the Ombudsman's office.

**In response:**

The policy of the Prisons Service has not been changed. Family members and friends may visit the inmates during the designated days and times (hours) during weekends, and there are no restrictions to prison facilities if any Government body or an organization wants to visit it as long as they make prior arrangement.

**Recommendation:**

Rules and practices should be harmonised so that all prisoners have the same rights and duties in respect of visits, exercise and permission to go out, etc.

**In response:**

It is a general rule that hard core criminals are not allowed to go out and do some work outside the prisons, however, the majority of the inmates (depending on the crime they have committed) are allowed to do some work outside for private persons, institutions or Government but such arrangements must be made with the Prison Service.

**Recommendation:**

NGOs should play a more important role in setting up training programmes, preparing prisoners for release, etc.

**In response:**

Namibia has three Rehabilitation Centres, one for juveniles and one of the Centres has an irrigation agricultural farm where the inmates cultivate and produce food for other prisons in the whole country.

There is one organization (NGO) called Sister Namibia which is helping the released inmate to prepare them for the Society. The Prisons Service have many projects inside the Prisons that keep the inmates busy and provide them with various skills in the job market or they can even employ themselves upon their release.

**Recommendation:**

Release boards should be made operational without delay.

**In response:**

The release board operate according to the provision of the law (the Prisons Act). A new board which consist of officials from the Prison Service has been established and approved by Cabinet, and they started functioning at the end of 2009.

**Recommendation:**

Protection of minors should be strengthened both within prisons and in police stations.

**In response:**

The policy regarding the separation of minors from adults in Prisons and Police cells has not changed. Minors have always been detained separate from adults. A juvenile Centre, namely Elizabeth Nampembe has been built in the north eastern region with educational facilities. We admit that the availability of juvenile detention facilities especially in police cells is our major challenges and the relevant line ministries are busy addressing the situation.

**Recommendation:**

Measures such as parole, judicial control, reduction of sentences, community service, diversion, mediation and permission to go out should all be developed.

**In response:**

Currently the Prison Authority is gradually implementing of the policy of community service which they have developed with the assistance from other countries especially the Finish Embassy. Currently there are pilot projects regarding community service in four regions; Caprivi, Kavango, Kunene and Oshana.

**Recommendation:**

Magistrates should be made aware of non-custodial measures and trained, and their number should be increased, as well as that of lawyers, in order to combat prison overcrowding.

**In response:**

The situation has improved after the government decided to use the legal qualified people from both Zimbabwe and Zambia as magistrates and prosecutors. Very recently many Namibians who are graduating from the Universities are being trained as magistrates and prosecutors and the remunerations of the magistrate has been improved to attract and keep qualified and experienced people on the bench. Magistrates are trained annually on non-custodial measures of sentencing but the system is not yet in place for supervision and monitoring of sentenced offenders outside correctional facilities.

**HEALTH****Recommendations**

The deficit of medical and paramedical personnel should be set right without delay. Large prisons such as those with high security, with a prison population of around 1,000 prisoners, should all have a qualified doctor as the head of the medical service. The Prison Health Board should also have more staff, notably by recruiting a doctor with epidemiological specialisation and a psychiatrist. It is essential that the Ministry in charge of prisons recruits its own psychiatrist who should be directly responsible for the care of mentally ill prisoners. This would only facilitate the work of the Legal Psychiatrist.

Ministerial departments and institutions involved in the management of the mentally ill in conflict with the law (Ministry in charge of Prisons, Health, Police, Justice, the Supreme Court and the Ombudsman's Office) should sit down together to discuss and harmonise their views on the management of this category of prisoners. They should agree on the interpretation of legal texts, in this

case the law for the mentally ill of 1993, and set up a mechanism of effective coordination for their actions and interventions.

A reference hospital should be created for Windhoek prison. This hospital, which would initially use the significant amount of medical equipment already available, would make it possible to limit the number of cases of prisoners taken to a civilian hospital, which themselves suffer from a shortage of staff.

Certain clinics in large prisons should be renovated/extended and contain observation rooms and rooms for isolation of contagious diseases which would be adequate and in accordance with the needs of the prison. Medical Units (clinics) should be opened in those prisons which do not already possess them.

Information and awareness raising sessions about AIDS for prisoners should be intensified and voluntary testing for HIV should be encouraged. Structures for psychological care and counselling, particularly before and after testing for those who are found to be HIV positive, should be strengthened.

People detained in police stations should have access to medical care and police stations should have a nurse officer capable of making a basic diagnosis and of directing the sick person to a health care centre if necessary.

#### Specific Recommendations to the Prison Administration

The Prison Administration should have a lawyer or qualified jurist in permanent employment.

#### **In response:**

The Prison Service has a Legal Officer, a Tanzanian national who is employed on a contract basis. He is the legal advisor to the Commissioner of Prisons and his advices the Prison Service on all other legal matters regarding discipline etc.

#### **Recommendation:**

All the necessary work for the maintenance and repair of facilities, particularly the sanitary installations, should be carried out as quickly as possible to avoid the irreversible deterioration of these very costly facilities.

To combat ill treatment of all kinds inflicted on prisoners, but also to improve the quality of relations between prisoners and staff, training of prison personnel should be considerably strengthened and a study should be undertaken in advance to identify the exact needs and priorities for training.

Minors should be kept strictly separated from adults.

#### **In response:**

It is the policy of the government that juveniles should be detained separate from adults, and it is one of the reasons why a Juvenile rehabilitation Centre has been built. However, sometimes adults are being kept with juveniles especially those who where Police Officers or moderate inmate not hard core criminals but still it is not the policy of the Government and the Prison Service and the matter is seriously being discouraged.

**Important Recommendations to the Police**

Conditions of detention in police stations should be improved without delay.

**In response:**

Upgrading/renovations of police cells have already started during 2006/2007, 2007/2008 and 2008/2009 Financial year of the national budget to all major police stations country wide. The upgrading includes police cells, kitchens, showers and exercise yards. At some police stations new cells has been constructed.

**Recommendation:**

All persons detained by the police should be allowed to receive visits from their families and friends as well as food from outside.

**In response:**

In terms of the law, any accused person has the right to be seen by his/her lawyer including his or her immediate family to bring for him/her the basic need including any kind of food, even if that person has not yet appeared in court and this is what has been happening and still the situation..

## **PART 1**

### **1.1 THE GENERAL LEGAL FRAMEWORK, WITHIN WHICH THE CIVIL AND POLITICAL RIGHTS ARE PROTECTED.**

#### **The Constitution**

Namibia became a State party to the ICCPR in 1995. Chapter 3 of the Namibian Constitution which contains the Bill of Rights incorporate all the fundamental human rights and freedoms contained in the ICCPR. The following civil and political rights are enshrined in the Namibian Constitution:

- The right to life
- The right to personal liberty
- The guarantee against torture or cruel, inhuman or degrading treatment or punishment
- The guarantee against slavery and forced labour
- The right to protection of law and the guarantee against discrimination on grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.
- The guarantee against arbitrary and unlawful arrest and detention.
- The right to a fair trial
- The right to privacy
- The right to marriage and to found a family, and
- The right to participate in peaceful political activities.

In addition, the following fundamental freedoms are enshrined in the Article 21 of the constitution:

- Freedom of speech and expression
- Freedom of thought, conscience and belief, which includes academic freedom in higher institutions of learning
- Freedom to practice any religion
- Freedom to peaceful assembly
- Freedom of associations or trade unions and political parties
- Freedom of movement within the country
- Freedom to reside and settle in any part of Namibia, and
- Freedom to practice any profession, or carry on any occupation, trade or business.

In terms of Article 23 of the Constitution the following rights cannot be derogated from or suspended even if a state of emergency has been declared: namely the right to life, fair trial, torture and other cruel or inhuman treatments or punishment. The Constitution explicitly abolishes death penalty.

By virtue of Article 144 of the Namibian Constitution, the Covenant is part of the Namibian municipal laws. The effect of Article 144 is that the rights and freedoms provided in the ICCPR are enforceable within Namibia by the judiciary and quasi-judicial bodies. Undoubtedly, the Namibian Bill of Rights is justiciable and it fully complies with the legal obligations as spelt out in Article 2 (3) of the ICCPR which provides that victims of human rights violations should be awarded remedies. The Government respect, protect and fulfilled the court rulings relating to the rights contained in the ICCPR. There are no political prisoners and detainees in Namibia, and there were no reports of political motivated killings or disappearances of persons in the country.

Article 5 of the Constitution further provides that the fundamental rights and freedoms enshrined in Chapter 3 shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of

the government and its agencies, and by all natural and legal persons in Namibia, and shall be enforceable by the courts.

Article 5 is strengthened and supported by Article 25 (2) of the Constitution, which give the right to the aggrieved persons who claim that their fundamental rights or freedoms guaranteed by the Constitution have been infringed, threatened or violated to approach a competent court for a remedy. In addition, the same Article, (Article 25(4)) empowers the courts to deal with cases of human rights violations, and to award monetary compensation to the victims.

## **1.2 THE ROLE OF THE JUDICIARY IN PROTECTION OF HUMAN RIGHTS**

Because Namibia has a justiciable Bill of Rights any person who alleges that his or her human rights have been violated or are likely to be violated may seek redress in the High Court (Article 25(2) of the Constitution). If he or she is dissatisfied with the decision or judgement of the High Court, he or she may appeal to the Supreme Court. The Supreme Court is the highest Court of Appeal.

Namibia has an independent judiciary which has actively upheld and promoted the constitutional rights of its citizens. The courts have handed down a number of decisions upholding the rights of individuals under the Bill of Rights, including the rights of persons with HIV/AIDS and the right of accused persons to legal representation to be provided by the State.<sup>1</sup>

## **PART II**

### **2.1. GENERAL MEASURE OF IMPLEMENTATION**

Over the past twenty years after independence, Namibia has maintained a working democracy, based on the rule of law and human rights principles. The country has also undertaken a broad programme of social and economic development to benefit the people of Namibia. However, widespread poverty and unemployment are major challenges facing the country. The country's poverty is characterised not only by skewed income inequality, but also by limited access to land and capital.

Namibian Legislation passed in support of Human Rights Instruments since the last report, is contained in Annex III hereto.

### **2.2. SUBSTANTIVE RIGHTS RECOGNIZED UNDER THE CHARTER AND MEASURED TAKEN TO IMPLEMENT THEM.**

It should be noted that some of the Articles of the Charter particularly those Articles which contain similar issues have been grouped together for better comprehension of related rights and freedoms.

#### **Article 1 and Article 2**

**Legal framework and measures taken to recognise the rights, duties, freedoms and entitlement to the rights and freedoms and their enjoyments**

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<sup>1</sup> See endnote 1 hereto.

## **The Constitution**

After independence, a new approach to international laws was formulated as embodied in Article 144 of the Namibian Constitution.<sup>2</sup>

In light of Article 144, Namibia has adopted the monist approach. Under this approach international law is directly applicable in the national legal order. Thus the constitution explicitly incorporate international law and makes it part of the law of Namibia. There is no need for any domestic implementing legislation, even though we have noticed that the Namibian courts were reluctant to apply the principles of the instruments without the back-up of a legal framework. Parliament has now implemented several laws to strengthen the human rights components of the Namibian legal framework as listed in annexed II hereto.

Undoubtedly, the Bill of Rights Contained in Chapter 3 is justiciable and most human rights issues are enforceable as their protection can be secured through the courts. The rights enumerated in the Constitution are confined to the so-called first generation or traditional human rights. The second and third generation rights also feature in the Constitution, but only as principles of the state policy and not judicially enforceable.

## **Article 3, 19 and Article 26**

### **2.3. EQUALITY AND EQUAL PROTECTION BEFORE THE LAW**

#### **The Constitution**

Article 10 of the Constitution deals with equality before the law and freedom from discrimination namely: on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. This is the closest that the Namibian Constitution gets to the recognition of group or minority rights; the persons protected by the provision may all be said to belong to a certain group, whether a natural or one formed by choice. The protection is indeed extended to the individuals.<sup>3</sup>

### **2.4. LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS**

#### **The Bill of Rights**

The Namibian Constitution is a product of the struggle for sovereignty and Human Rights. It came into force on the country's independence as the supreme law of the country and, therefore, the Constitution is committed to the preservation of fundamental human rights and freedoms. This is reflected in the first provision, which states that Namibia is a "*...sovereign, secular, democratic and unitary state founded upon the principle of democracy, the rule of law and justice for all*".

The Bill of Rights protects most of the human rights referred to in the various international human rights instruments. For example, the right to life is protected. The death penalty is totally abolished in Namibia. Personal liberty is protected, and freedom from torture or cruel, inhuman or degrading treatment or punishment is prohibited, and so is slavery and forced labour. Various rights of the child,

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<sup>2</sup> See endnote 2 hereto.

<sup>3</sup> See endnote 3 hereto.

including the right to education, are protected.<sup>4</sup> Various fundamental freedoms like freedom of speech; expression, thought, conscience and belief, association and movement are also protected. The Constitution further guarantees equality before the law and the right of the individual to a fair trial; a right to private property and privacy; and guarantees the freedoms of association, speech, religious affiliation and cultural orientation, including the right to administrative justice. Article 131 of the Constitution provides that the rights and freedoms contained in Chapter 3 are entrenched, and the provisions may not be repealed or amended insofar as such repeal or amendment detracts or diminishes from such rights and freedoms. Article 5 of the Constitution obliges the three organs of the State including the executive to uphold and respect the fundamental rights and freedoms as spelled out in Chapter 3 of the Constitution.

### **The role of the judiciary in protection of human rights**

Because Namibia has a justiciable Bill of Rights any person who alleges that his or her human rights has been violated or are likely to be violated may seek redress in the High Court (Article 25(2) of the Constitution). If he or she is dissatisfied with the decision or judgement of the High Court, he or she may appeal to the Supreme Court. The Supreme Court has the ultimate appellate jurisdiction.

Namibia has a strong judiciary which has actively defended the constitutional rights of its citizens. The courts have handed down a number of cases upholding the rights of individuals under the Bill of Rights, including the rights of persons with HIV/AIDS and the right of accused persons to legal representation to be provided by the State.<sup>5</sup>

### **Judicial precedence of Human Rights Cases**

The list of cases is listed under Annex II hereto.

The following cases are of particular importance:

Government of the Republic of Namibia and Others v/s Mwilima and all the Other Accused in the Treason Trail 2002 NR 235 (SC), the accused (applicants) were all awaiting trial prisoners in a treason trial. The director of Legal Aid disapproved their application for legal aid arguing that there were no funds available to grant them with legal aid. The suspects launched an application in the High Court for an order directing the State that such legal aid should be granted. It was argued on behalf of the Applicants that according to the Constitution the State has an obligation to provide Legal Aid to the Applicants in order for them to have fair trial as provided in Article 12 of the Constitution. The government on the other hand argued that Legal Aid was provided in Article 95 of the Constitution as guiding principles of State policies, and that such legal aid is only subject to availability of resources, therefore it was not enforceable. The High Court ruled in favour of the accused/applicants, and ordered that the Director of legal aid should provide such legal aid. The State appealed to the Supreme Court, and the Supreme Court confirmed the ruling of High Court.

Nanditume v Minister of Defence 2000 NR 103, and Government of the Republic of Namibia & Others  
In this case, the Ministry of Defence refused to recruit Nanditume into the Defence Force citing his health status that he was HIV positive which was against the Defence recruitment policy. Nanditume applied to the High Court to declare such policy unconstitutional because it was discriminating against

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<sup>4</sup> See endnote 4 hereto.

<sup>5</sup> See annex II hereto

the people living with HIV/AIDS. The court ruled in his favour and ordered the Ministry of Defence to employ him.

### **The Ombudsman**

The Office of the Ombudsman was established in terms of the Article 89 of the Constitution and it is regulated in terms of the Ombudsman Act, Act No 7 of 1990. The key mandate areas and powers of the Ombudsman in Namibia with regard to human rights violations include the protection, promotion and enhancement of respect for human rights in the country.

The Ombudsman is empowered to investigate allegations of human rights violations *mero motu* or after receiving complaints from individuals. In this regard he has powers to investigate any elected, appointed official or employee of any organ of the Central or Local Government, any official of a State owned enterprise, or in which the State or the Government has substantial interest.

The Ombudsman established a Human Rights Committee which is composed of civil society and nongovernmental organizations to put special emphasis on gender based violence amongst other human rights abuses.

### **Ministry of justice**

The Ministry of Justice is responsible for overseeing the promotion, protection and compliance of human rights on behalf of the government. It ensures implementation of human rights programmes, and administration of justice. The Office of the Attorney General scrutinizes all the bills, (draft legislation), to ensure that such Bills are not in conflict with the Constitution.

The Ministry has in collaboration with the University of Namibia set up the Human Rights and Documentation Centre (HRDC). The Centre undertakes outreach activities and assists with queries on human rights issues. The Directorate for Law Reform and Development Commission and Legislative Drafting in the Ministry of Justice provide research and support in the creation of new laws to remove discriminatory statutes of the apartheid era as well as drafting new legislation to conform to the Namibian Constitution international standards and norms.

### **The Police Force**

There are 132 police stations and substations in the country. In terms section 6 of the Police Amendment Act, Act No 3 of 1999 the functions of the Police Force are:

- Preservation of the internal security of Namibia
- Maintenance of law and order
- Investigation of any offence or alleged offence
- Prevention of crime
- Protection of life and property.

Every year the Police receive human rights training designed by a local NGO, the Legal Assistance Centre. The Faculty of Law at the University of Namibia also train senior members in the Police Force and NDF members in human rights and criminal justice system. Some Officers attended training programmes with human rights components, including human trafficking at the international law Enforcement Academy in Gaborone, Botswana.

## **2.5. NAMIBIAN LEGISLATION SUPPORTING HUMAN RIGHTS INSTRUMENTS**

The civil and political rights are enshrined in the Namibian Constitution under the Bill of Rights. In order to give effect to the constitutional provisions parliament has passed legislation since our last reports as listed in annex III hereto.

### **Criminal Justice System**

The criminal justice system of Namibia is governed by the Constitution, relevant legislation, and common law. The jurisdiction on criminal justice is vested in the judiciary. In the exercise of this jurisdiction, the courts and the law enforcement agents are bound by the Constitution and all other relevant legislation such as the Criminal Procedure Act, Act 51 of 1977, the Police Act., Act No 3 of 1990 and its respective regulations.

The underlying Constitutional principle of the criminal justice system is under Article 12. The accused has a right to a fair trial in terms of Article 12. It is a Constitutional provision that the duty to prove an accused's guilt rests squarely upon the shoulders of the State. Hence, the accused need not to assist the state in any way in discharging this onus. The accused has a right to be presumed innocent, to remain silent, not to testify, not to incriminate him and not to be a compellable witness against himself. In terms of section 73 of the Criminal Procedure Act, Act No 51 of 1977, an accused who is arrested shall be entitled to the assistance of his/her legal representative from the time of his/her arrest to the finalization of the case. The Namibian courts have handed down a number of cases upholding the rights of individuals under the Bill of Rights, including the rights of persons with HIV/AIDS, and the right of accused persons to legal representation provided by the State.<sup>6</sup>

### **Affirmative Action and Gender Equality**

Namibian women's struggle for gender equality is not only played at the social and legal levels, but also in the political arena. The Namibian Constitution prohibits gender-based discrimination. Women's civil liberties and freedom of movement is guaranteed by the Constitution and married women can travel without their husband's permission. Women's physical integrity is also well protected under Namibian laws and there is no restriction on women's freedom of dress. Namibia acceded to CEDAW in 1992 and ratified the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women in 2000 without reservation.

Namibia made progress in the promotion of the empowerment of women, socially and legally notably in the increased number of women in positions of power. There is overwhelming constitutional and legislative supporting gender equality. A number of Government policies have been established to promote the economic advancement of women in an environment where women have historically been disadvantaged.

Namibian women have the same ownership rights as men, but are obstructed by traditional practices. Women are particularly disadvantaged as regards access to land. The land reform law of 2002 placed all land under State ownership. Traditional Authorities allocate the rights to use this land to individuals and, in theory, men and women have equal access to communal land. However, women's rights are rarely recognized by tribal chiefs. In addition, many single women with children lack the technical skills and resources to farm the land allocated to them.

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<sup>6</sup> See Annex II hereto as well as paragraph 2.4 supra.

The Namibian Constitution states that all citizens have the right to acquire and dispose of property. The Married Persons Equality Act grants men and women equal access to property, and allows either spouse to exercise this right without the partner's consent. Discrimination persists in customary marriages, which are not legally required to be registered under customary law and husbands have the power to claim control over their wives' property.

There is no legal discrimination against Namibian women in relation to access to bank loans and other legal binding contracts. The Married Persons Equality Act specifies that a partner's consent is not required to obtain loans or enter into commercial agreements.

Since independence in 1990, there has been an increase in the number of women in both houses of parliament (the National Council and the National Assembly) from 20% to 27%. It is also important to mention that during 2005/2009, the deputy Prime Minister and deputy Speakers for both houses of parliament were women. In a total number of 42 Ministers and deputy ministers, 5 had been female Ministers and 5 deputy female deputy ministers.

There have been greater improvements at regional and local authority political levels. Out of 13 regional governors for all the 13 regions, 9 are men and 3 are female governors.

The female-male ratio increased from 43 to 57% in the 2004 elections and there are now 11 local authorities in which women hold a majority of seats, compared with only four in the 1992 elections. There is also no local authority without women councilors. Representation by women in local authority councils is far higher than it is in parliament, the cabinet or the judiciary or – especially – in regional councils, where women hold only eight seats out of the total of 95.

All affirmative action legislations passed since 1992 requires that the number of women in decision-making positions should be increased. It had some success in both parliament and regional and local councils. However, it was not until the 1998 local council elections that affirmative action measures were strengthened, with a requirement that party lists should include a minimum of three women on councils with 10 members or fewer and at least five women on larger councils.

Since our last report Parliament passed legislation indicated in annexure III to create an enabling environment for gender equality.<sup>7</sup>

## **Article 4 and Article 5**

### **2.6. THE RIGHTS TO LIFE, LIBERTY AND RESPECT FOR DIGNITY**

The right to life is protected under Article 6 of the Namibian Constitution, and the death sentence has been expressly abolished. The traditional power of the courts martial to impose the death sentence for offences such as cowardice in the face of the enemy has also been abolished by this Article. There are no reports of political motivated killings or disappearances of persons in the country.

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<sup>7</sup> See endnote 5 hereto.

## **Torture, inhuman and degrading treatment**

Article 8 of the Namibian Constitution prohibits torture or cruel, inhuman or degrading treatment or punishment. It is part of the Bill of Rights which is entrenched which means that suspension of this right is prohibited. Namibia appreciates the advice of the treaty body on Torture which recommended that there is a need for Namibia to enact legislations that would clearly define and criminalize torture in our criminal justice system. The Law Reform and Development Commission had recently reported that the delay to implement the committee's recommendation was caused due to the consultation process with the experts on the subject matter. We are pleased to report that a Bill is being draft and it will soon be submitted to the Minister of Justice.

It is worth to mention that Article 12 (1) (f) of the Constitution provides that no court shall admit in evidence against such person's testimony which has been obtained from such persons in violation of Article 8(2) (b) which prohibits torture.

## **Slavery and forced labour**

Article 9 of the Namibian Constitution prohibits slavery and forced labour. The new Labour Act, Act 11 2007 also prohibits forced and child labour as well as any discrimination and sexual harassment in workplace.

However, the Government still faces some challenges on child labour. In 2010 the Ministry of Labour carried out investigations around the country of suspected incidents of child labour in the agricultural sector. The investigations revealed that there were more than 111 child labour cases mainly in the sectors of agriculture, livestock, domestic service, charcoal production, and the commercial sex industry sectors.

## **Article 6**

### **2.7. RESPECT FOR CIVIL LIBERTY**

Personal liberty is guaranteed by Art 7 of the Namibian Constitution, read together with Article 11 and prohibits arbitrary arrest or detention. There are no political prisoners and detainees in Namibia, and the Government and its agents generally observe and respect these prohibition.

## **Article 7**

### **2.8. THE RIGHT TO FAIR TRIAL**

The right to a fair trial is enshrined in Article 12 of the Namibian Constitution. Article 12 (1) (d) of the Constitution provides that "*all persons charged with an offence shall be presumed innocent until proven guilty according to law...*" One of the fundamental principles of a fair trial is that the accused should be afforded the opportunity to be heard and be part of the decision making processes which may affect his/her interests. To assist them in such process they are entitled to be represented by a legal representative of their choice or apply for legal aid. The effectiveness of the judiciary in Namibia is respected and all persons have an equal opportunity in court for a fair trial.

The formal court system has three levels: the lower courts with 30 magistrate courts country wide; two High Courts (one in the Windhoek and the other one in the northern town of Oshakati); and the

Supreme Court which serves as the last court of appeal and constitutional review. Military courts try members of the military only and do not provide the same rights as civil and criminal courts. Customary courts hear most civil and petty criminal cases in rural areas. The law delineates which offenses may be dealt with under the customary system.

Most rural citizens first encounter the legal system through the customary courts, which deal with infractions of local customs among members of the same ethnic group. Parliament passed the Community Court Act No 10 of 2003. This legislation delineates the role, duties, and powers of traditional leaders and provides that customary law is valid only if it is consistent with the Namibian Constitution.

The courts continued to act independently and in some cases it made judgments and rulings which are critical and against the government.<sup>8</sup>

### **High treason case**

In 1999 a failed separatist attack took place in the Caprivi Region. About eight people were murdered during the insurrection. After the failed separatist attack a number of persons were arrested. At least 3 separate trials ensued from the events of the 2<sup>st</sup> of August 1999. The accused were indicted *inter alia* for treason, sedition, murder and firearms offences. All the suspects have been afforded legal representation at the expense of the Government.

The main treason trial is ongoing in Windhoek in which there are 113 accused persons. The initial number of accused persons when the trial commenced stood at 132. From that figure, charges were withdrawn against five. Several died in custody during the course of the trial from natural causes. A second treason trial is already completed in which there were 12 accused persons. From that number 10 were found guilty and sentenced to lengthy terms of imprisonment. The High Court acquitted two accused on all counts.

Another treason trial stemming from the events of 2<sup>nd</sup> of August 1999 is currently under way in the Oshakati High Court. It was set down from the 21 September to 22 October 2010 for hearing. Since the start of that trial, the defence in their cross examination of the prosecution witnesses they relied heavy on voluminous records of the main treason trial as well as the already concluded treason trial. The cross examination of witness in order to test their credibility will inevitably cause further delay in the finalisation of the trial. The right to challenge a witness under cross examination is an integral part of the Namibian legal system and cannot be curtailed.

A number of factors are to be attributed to the delay in the finalisation of the treason trials. At one stage a rise in the number of deaths among state witnesses was experienced. Coupled with that, a team of prosecutors was involved in a motor vehicle accident in which one Prosecutor died and two others critically injured. They had to spent months on end in intensive care and many more recuperating.

During the course of the trial, the State intended to tender documents, wherein accused persons made some confessions with regard to the charges they are facing. This was objected to by the defence on the ground that these confessions were obtained in an unlawful manner. The Court then ordered that the trial proceed by way of a trial- within -a -trial in order to determine the admissibility of these confessions. The Court held that the confessions were inadmissible. The prosecution then appealed

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<sup>8</sup> See Annex II hereto for list of cases

against that order of the Court to the Supreme Court. The Supreme Court dismissed the appeal expressing its concern about the delay in the completion of the trial.

It is very difficult to predict when the main treason trial will come to finality. The prosecution still has more witnesses it intends to call. It is not known whether the accused persons will testify in their defence and will call witnesses as they are entitled to. If they elect to testify the State will be entitled cross-examine the defence witnesses. Thereafter, after the State and Defence close their respective cases they will be afforded an opportunity to address the Court in argument orally or this may take the form of written arguments after which the Court will decide the issue of guilt on the merits.

## **Article 8 and Article 10**

### **2.9. RELIGIOUS AND SOCIO-CULTURAL RIGHTS**

Namibia is a secular state in terms of Article 1 of the Constitution, and freedom of religion was adopted through the Bill of Fundamental Rights. It is estimated that about 90 % of the population are Christian whilst 10 % practice indigenous or other religions.

Namibia is a country with a rich culture and traditions. The Government of Namibia does not maintain records on the ethnicity or race of its citizens. Cultural expression reflects the many different groups that co-exist in the country. Namibian cultural groups perform traditional African dances to rhythmic drum beats. Cultural development is further promoted by institutions such as the National and Mobile Museum, Museum Association of Namibia, National Theatre of Namibia, College for the Arts and the Arts Department at University of Namibia (UNAM). Many of these groups are invited and travel all over the world to participate in international cultural events and performances.

Parliament has enacted a law, the Traditional Authorities Act, Act 25 of 2000 for all indigenous groups to give recognitions to traditional leaders. The government has recognised more than 43 Traditional Authorities in terms of the Act, and these include also the five San ethnic groups. There are no reports of anti-Semitic acts.

### **2.10. FREEDOM OF ASSOCIATION**

The Constitution provides for freedom of association, including freedom to form and join trade unions, and the Government respects these rights in practice. The Labour Act, Act 6 of 1992 laid the foundation for sound labour practices in Namibia. The Act did not solve the problem of unemployment. It excluded the most vulnerable groups such as farm workers and domestic workers from overtime arrangement.

One of the biggest weaknesses of the 1992 Act was the slow functioning of the District Labour Courts System. Not only were the delays causing problems for employers and employees alike, it became very costly procedure where neither side was prepared to enter into a District Labour Court without a Labour Consultant or a Legal Practitioner. This often meant that the original reason for the dispute became obscured and the final decisions depended on the relative skills of the consultant or the legal representative. As a result the process of reforming independent Namibia's first Labour Act (Act 6 of 1992) started in the late 1990s and took the form of discussions within the system of the tripartite Labour Advisory Council. It was then decided that instead of merely amending the 1992 Act, a completely new Labour Act should be drafted. This resulted in the Labour Act No 11 of 2007 which sets the framework for Namibia's labour relations and working conditions.

The Act extended that right to the public servants, farm workers, and domestic employees. Trade Unions have no difficulty registering, and there are no government restrictions on who may serve as a union official. The law provide a process for employers to recognize trade unions and protection for the members and organizers. The law also empower the Labour Court to remedy unfair labour practices and explicitly forbids unfair dismissals. The labour Act prohibits forced and bonded labour by adults and children.

## **Article 9**

### **2.11. THE RIGHT TO INFORMATION AND PRESS FREEDOM**

Namibia does not have any specific legislation that provide for an express right of Citizens to access or to gather information. However, it is within the interests of our democracy, legal certainty and parliamentary accountability that legislation is readily available to all citizens. In Namibia, Laws are published in the Government Gazette upon promulgation, and members of the public may obtain a copy at the Ministry of Justice or parliament for a minimum fee. Furthermore, there is no government restriction on access to the internet in the country.

There are over 100 000 internet users in the country, about 5 % of the population. In 2009, the Editor's Forum of media in Namibia established the office of the Media Ombudsman as a self-regulatory mechanism.

The Communication Act which had been passed by parliament in 2009 establishes the Communication Regulatory Authority of Namibia (CRAN) to regulate communications, including the media, and provide that the Intelligence Services can monitor emails and internet usage with authorization from any magistrate for security reasons.

### **2.12. MEDIA**

A significant level of media freedom has existed in Namibia since independence. According to the Reporters Without Borders 2010 World Press Freedom Index rankings, Namibia tops Africa on press freedom. In 2007 Namibia was ranked 25<sup>th</sup> out of 169 countries in the world. It is one of the more media-friendly countries in Africa. Freedom of speech, expression and freedom of the press and other media is guaranteed under Article 21 of the Namibian Constitution and on the whole this freedom is respected by the Government. Parliament enacted legislation like the Broadcasting Act, Act No 9 of 1991 and Namibia Communications Commission Act No 4 of 1992 to provide the legal framework to govern and create a liberal environment for the media in the country.

One notable case reported in the local news papers concerns a freelance journalist, Mr. John Grobler who was allegedly assaulted by two men in a public bar. It was further alleged that he was assaulted because he usually report negatively on the ruling party (SWAPO). The matter was reported to the police and it is still with the Prosecutor-General for decision making.

Namibia Broadcasting Corporation (nbc), which is the only Public broadcaster, has 8 radio services and one television channel. It broadcasts in 6 languages from Windhoek and almost in all the indigenous languages from the transmitters in their respective areas. There is one privately owned television channel (One Africa), Namibia's most popular commercial free-to air TV station, and other international channels via cable satellite such as the BBC, CNN, SABC Africa, etc. There are around 20

private and community radio stations, BBC World channels which are available, and Radio France Internationale broadcasts on FM in the capital.

The nbc and the private press give coverage to opposition parties, even including views very critical of the government. Over the years the media has continued to operate in an environment essentially free of government or ruling party interference.

The media, particularly the Community radios have contributed significantly to the public availability of information and are used as a tool to communicating with their family and relatives who live in other towns and in the rural areas. The newspapers are also seen as valuable in the fight against corruption and sensitize citizens on human rights issues.

In spite of its small population, Namibia has a varied and lively press. In 1990 there were 7 print Medias, three of these are dailies – *the Namibian* (English and Oshivambo), *Die Republikein* (Afrikaans), *Allgemeine Zeitung* (German). Two appeared twice a week - *New Era* (issued by government), and *the Namib Times*, and two others appeared weekly – *the Windhoek Observer* and *The Economist* both English. In 2006 two more weekly private print Medias hit the streets of Namibia; *the Informante* (currently not being sold) and the *Namibian Sun*. *Insight Namibia* came into existence in 2004 as a monthly current affairs magazine based on the principle of investigative reporting.

Namibia upheld and promoted the fundamental freedom of association and that of the press. The existence of several unions, professional groups and free media, has always kept Government on its toes. Trade unions have made several demands on terms and conditions of service and at some point questioned Government decisions on the remuneration of political office bearers. Student associations have raised concern on education matters; such as study loans.

## **Article 11**

### **2.13. THE RIGHT TO ASSEMBLE FREELY**

This right enjoy Constitutional protection in our legal system under Article 21 read together with Article 17. This right and freedom is only protected provided the assembly or demonstration takes place peacefully and without arms. The Public Gathering Proclamation (AG.23 OF 1989), makes it an offence to carry weapons at a public gathering. The provisions of the Proclamation are also applicable to election campaigning, religious gathering, celebrations and other demonstrations. The Proclamation requires any party or an organization to inform the police and be given permission before any such gathering. No one has challenged the proclamation in court to test its constitutionality since independence.

## **Article 12 and Article 23**

### **2.14. FREEDOM OF MOVEMENT, REFUGEES AND ASYLUM SEEKERS**

Article 21 of the Namibian Constitution guarantees the freedom of movement. The Immigration Control Act, Act No 7 of 1993 and the Refugees Recognition and Control Act, Act No 2 of 1999 covers the issue of asylum seekers and expulsion of non-nationals.

Namibia ratified the Convention relating to the Status of Refugees of 1951 as well as the Protocol relating to the status of Refugees of 1967 and the African Union Convention governing the specific aspects of the Refugees in Africa of 1969. Parliament passed legislation in the form of The Refugee

Recognition and Control Act of 1999 to give effect to these international instruments. This Act provides for the granting of asylum or refugee status and the Government established a system for providing protection to refugees. The Government reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement in consideration of security. In practice the Government provides protection to refugees against expulsion or return to countries where their lives or freedom would be threatened.

Approximately 7 200 refugees and asylum seekers reside at the Osire refugee settlement while approximately 1300 refugees live outside the settlement. Angolan refugees represent 75% of the refugee population. The Government maintains strict control over civilian access to the Osire Settlement; however, the ICRC, UNHCR, and the UNHCR's NGO Partners have regular and unrestricted access to the Settlement.

## **2.15. FOREIGN RELATIONS AND PEACE KEEPING**

Namibia follows an independent foreign policy. Parliament passed the following legislation to provide for matters of national and International peace (peace keeping) and security as well as the principles of solidarity and friendly relations:

- the Defence Act, Act No 2 of 2002,
- Extradition Act, Act No 11 of 1996,
- International Co-operation in Criminal Matters Act, Act No 9 of 2000 and various bilateral and multilateral agreements.

Namibia participated in the UN and AU peace keeping mission in countries such as Cambodia, Angola, East Timor and Sudan. Namibia has more than 20 diplomatic missions abroad, and there are more than 105 resident and non-resident diplomatic missions and relations including the Consular representatives of other Nations in Namibia.

### **Article 13**

## **2.16 DEMOCRACY AND GOVERNANCE**

Namibia has a multi-party system of government. It conducts regular elections as a way of guaranteeing governmental accountability and promotes democracy. All citizens have the right to participate freely in all government structures directly or through their freely elected representatives at the national, regional and local government levels. Such elections are conducted in terms of the Namibian Constitution and the Electoral Act, Act No 24 of 1992 as amended. Every citizen over the age of 18 (eighteen) years has the right to vote. Every citizen above the age of 21 (twenty-one) years has the right to stand for public office. The first president, the Founding President Dr. Sam Nujoma served for 15 years, and the current president, His Excellency President Hifikepunye Pohamba took over in 2005 very peacefully.

Namibia held Presidential and the National Assembly elections on 27 and 28 November 2009. International and domestic observers characterized both elections as free and fair, reflecting the will of the electorate. Eight opposition parties won a total of 18 seats. However, some opposition parties approached the High Court alleging that the Electoral Commission had violated the election laws during the counting process and as a result they asked the High Court for the recount. The matter is still pending before court. Meanwhile all the elected members including those opposition parties who had challenged the November election results had been sworn in and taken up their seats in parliament. Regional Councils and Local Authorities Elections will take place in November 2010.

## **2.17 ACCESSES TO PUBLIC PROPERTY AND SERVICES**

The Namibian Constitution states that all citizens have the right to acquire and dispose of property. The Married Persons Equality Act grants men and women equal access to property other than land, and allows either spouse to exercise this right without the partner's consent. Discrimination persists in customary marriages, which are not legally required to be registered; under customary law, husbands have the power to claim control over their wives' property.

The country has relatively well-established social infrastructures such as hospitals, schools, water points and postal services.

## **2.18. ACCESS TO DRINKING WATER**

In Namibia the main sources of drinking water are piped water, boreholes, protected wells, stagnant water and flowing water/rivers. The Namibia Household Income and Expenditure Survey of 2003/2004 revealed that 65 per cent of the households in the country have a distance of less than 1 kilometre to their source of drinking water. Small percentages of households, 20 and 8 per cent have up to or up to 2 kilometres respectively in distance between household and the source of drinking water. Out of all households 7 per cent have a distance have a distance of 3 kilometres or more. Among urban households 96 per cent have a distance of less than 1 kilometre to a source of drinking water.

In the regions of Khomas, Erongo and Otjozondjupa 97, 95 and 91 per cent of households respectively have a distance of less than 1 kilometre between the household and its source of drinking water. In the regions of Kavango, Ohangwena and Oshikoto the share of households where the distance to the source of drinking water is 3 kilometres or higher.

## **2.19. ACCESS TO SCHOOLS**

There are 1 672 schools, of which 1571 is State schools and 101 is private schools. 1039 are primary schools of which 986 are State schools and 53 are private. There are about 20 333 teachers in the country for about 577 290 learners (male 53, 8% and female 50, 7%) who enrolled in schools in 2010, of which 407 000 is the enrolment at primary schools. The official age for a child to start with compulsory education at State schools is 6 years and the duration for compulsory education is 10 years.

Learners at Government higher schools as well as the students at tertiary institutions have the right to elect their Student Representative Councils.

## **2.20. ACCESS TO HEALTH FACILITIES**

Currently there are 1,150 outreach points, 265 clinics, 44 health centres, 35 district hospitals, 3 intermediate hospitals and 1 national referral hospital with a total of 6 756 hospital beds in Namibia. In 2005, Namibia had one doctor per 3650 people, the situation has not changed much ever since. The qualifications of medical practitioners and medical care in Namibia are on par with international standards of most first world countries, advanced medical facilities and about 80 per cent of the country's medical specialists are based in Windhoek.

The Demographic and Health Survey of 2006 revealed that 30 per cent of the household in Namibia are less than 1 kilometre to the nearest clinic or hospital and 34 Per cent is between 2 and 5 kilometres. However, 7 per cent of the population still travel more than 40 kilometres to the nearest clinic or hospital. In Urban areas distances are shorter than in rural areas. Khomas, Erongo, and Oshana are the

three regions which are less than 5 kilometres to a clinic or hospital, whereas places such as Ohangwena, Omaheke, and Oshikoto regions are more than 6 kilometres to a health facility. The most readily available services are: immunisation, education on HIV/AIDS, including the use of condoms and reproductive health.

Most women are delivering in health facilities countrywide. This service is also mostly provided in all hospitals and health centres. Although the health policy calls for this service to be provided also in clinics, at the moment only emergency deliveries are provided at clinics. This is due to limited personnel and space, as well as required delivery supply at the clinics.

Like many other countries in Africa, Namibia faces a threat to human welfare and the economy because HIV/AIDS is a major threat and it is now the leading causes of death in the country. Namibia is among the top ten affected nations in the world. In a survey carried out by the Ministry of Health during the year 2005, 22 per cent of the pregnant women were found HIV positive. In our national effort to combat HIV/AIDS, Government launched a Strategic Plan Programme in 1999, and in 2009 the government lodged a HIV/AIDS Policy that calls on all stakeholders to contribute in the fight against HIV/AIDS. A considerably high budget is allocated to fight HIV/AIDS prevention. There are 75 681 people who are on ARV treatment as at till March 2010, the programme started in 2004 at all Government hospitals.

## **Article 14**

### **2.21. THE RIGHT TO PROPERTY**

The right to own property is constitutionally protected in Article 16 of the Namibian Constitution. This Article protects the right of individuals to acquire, maintain and donate property, such as land, houses and personal effects like clothing, cars, etc. Article 16 further protects individuals from being deprived of their property without compensation. Ownership of fixed property is subjected to the possibility of expropriation by the government only if it is entitled to do so by a law which applies to everyone. However, expropriation would preferably be permitted for public purposes rather than in the public interest. Property is not only restricted to land but also includes personal property such as pensions and medical benefits.

Parliament passed the Communal land Reform Act No 5 of 2002, the Act governs the allocation of communal land. It provides that widows have a right to remain on communal land allocated to their late husbands, even if they remarry. It further provides that women must be represented on the communal land Boards to monitor the implementation of the Act.

## **Article 15**

### **2.22. ACCEPTABLE CONDITIONS OF WORK**

In terms of the Labour Act, the standard (minimum) legal hours to work is 45 hours per week. An employer may require no more than 10 (ten) hours per week of overtime, and the law requires payment for overtime work. The law mandates 24 (twenty four) working days of annual leave per year, and at least 36 (thirty six) workdays of sick leave over a three-year period, and three months of maternity leave paid by the employer and the Social Security Commission.

The labour Act does not provide for a minimum wage, but mining, construction, security, and the agricultural sectors have set up minimum wages through collective bargaining. The Act also provide for equality of opportunity, terms of employment, maternity leave and job security for women.

## **Article 16**

### **2.23. THE RIGHT TO HEALTH**

Health services of Namibia are run by the Ministry of Health and Social Services. At independence the country inherited a fragmented health system based on racial segregation, and marked by a concentration of infrastructure and services in urban areas. Parliament passed Hospitals and Health Facilities Act No 36 of 1994 to consolidate and repealed the laws relating to State and private hospital health facilities, which are broadly defined to include clinics, pharmacies and laboratories. The Ministry of Health and Social Services has received a relatively high share of funds from the national budget since independence. The financial resources allocated to the Ministry have contributed to a number of health sector reforms in order to expand the availabilities of health facilities in rural areas, which has taken place in the area of Primary Health Care, and a significant increase in the coverage of various services as well as the general improvement of health services in the country.

### **2.24. PHYSICAL AND MENTAL HEALTH OF THE CITIZENS**

The government has a national health policy. Most of the primary health care policies of the World Health Organisation have been incorporated into Namibia's health policy. The system inherited at independence has been reoriented and the health districts have been enhanced. A Comprehensive Primary Health Care Programme has been implemented since Independence in all health districts in the country.

There are state hospitals in all major towns in the country. In smaller towns, villages and rural settlements there are well-equipped and staffed clinics and healthcare centres are operated by the Ministry of Health. Windhoek, the capital City has four private hospitals and six more private hospitals in major towns of Otjiwarongo, Tsumeb, Walvisbay, Swakopmund and Ongwediva.

Like many other countries in Africa, Namibia faces a threat to human welfare and the economy because HIV/AIDS is a major threat and it is now the leading causes of death in the country. In a survey carried out by the Ministry of Health during the year 2005, 22 per cent of the pregnant women were found HIV positive. In our national effort to combat HIV/AIDS, Government launched a Strategic Plan Programme in 1999, and in 2009 the government lodged a HIV/AIDS Policy that calls on all stakeholders to contribute in the fight against HIV/AIDS. A considerably high budget is allocated to fight HIV/AIDS prevention. The results from the biennial Sentinel Survey show that the incidence of HIV/AIDS raised from 19.3 per cent in 2000 to 22.0 per cent in 2002, and stabilised thereafter at 19.7 per cent in 2004 and 19.6% in 2006 to 16,8 % in 2010.

### **2.25. THE FOLLOWING HEALTH ISSUES ARE TO BE ADDRESSED IN THE NEXT 5 YEARS:**

#### **HIV/AIDS**

HIV/AIDS remain the biggest challenge to the health sector as well as to the Namibian economy. The most important issue remains that of behavioural change caretaking of HIV/AIDS orphans.

#### **Malaria**

Malaria is a seasonal epidemic which heightens during the rainy season and control measures to reduce high fatality rates need to be intensified.

## **Tuberculosis**

The ineffectiveness of drugs for tuberculosis (TB) treatment is a major problem. In view of the fact that TB is increasing in line with the increase of HIV/AIDS, this will require the introduction of new treatment methods.

## **Nursing Care**

The standard of nursing care in Namibia must be improved. This must include continuous professional development for all nurses to address the problem of negative attitudes among nurses.

## **Policy formulation**

The priorities of the MOHSS will be to finalize legislation and policies governing the programme interventions more especially for HIV/AIDS, Malaria, Tuberculosis and environmental health.

## **Birth registration of Children**

Namibia is among the first African countries that ratified the Convention on the Rights of a Child, which states that all children have the right to be registered immediately after birth. The Ministry of Home Affairs and Immigration is responsible for the normal birth registration and issuing of birth certificates of both new born babies and other citizens. The MOHSS plans to expand birth registration points around the country to hospitals. As from the end of September 2008 all the babies born in Windhoek, can be registered and be issued with birth certificates.

## **Capacity building**

The MOHSS will strengthen the existing capacity building interventions. Emphasis will be placed on ensuring the training of the required number of staff especially much needed technical staff, namely doctors, dentists and pharmacists, and medical technology.

## **Article 17**

### **2.26. THE RIGHT TO EDUCATION**

Article 20 of the Namibian Constitution provides that all persons in Namibia shall have the right to education. It further provides that Primary education shall be compulsory and shall be provided free of charge at State schools. Education is compulsory for 10 years between the ages of 6 and 16. Primary education is for seven years, and secondary school last for five years. In 2001 Parliament passed the Education Act, (Act 16 of 2001) to give effect to the Constitution and other International Human Rights Instruments. The Act allows for school parents committees to establish a school development fund which can be levied at an amount of N\$ 500-00 (US\$ 68.50) and N\$ 250-00 (US\$ 34.24) for secondary and Primary schools respectively. The Act further provides that no child should be turned away as a result of non payment of school fees. There are however a number of reports that some schools don't adhere and comply with the law. Many children are denied access to certain schools because they cannot afford to pay school fees.

There are 1 672 schools in Namibia, of which 1571 are State schools and 101 are private schools. 1039 are primary schools of which 986 are State schools and 53 are private. There are about 20 333 teachers in the country for about 577 290 learners (male 53, 8% and female 50, 7%) who enrolled in schools in 2010, of which 407 000 is the enrolment at primary schools.

Since Namibia is a secular state religious and moral education of a certain religion only is not offered in Government schools as a compulsory and examinable subject.

Article 19 of the Namibian Constitution provides that every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.

The Namibian Government has created a Ministry of Youth, National Service, Sport and Culture. The Directorate of Arts and Culture, has been mandated to put the content of Article 19 into practice. Much positive work in this regard has been done to promote culture and national unity and in addition increasing attention is also being given to the common national and international facets of different cultures in Namibia:

- Recognition of the wide ranging heritage in Namibia constitutes the acknowledgement of the contributions of individual communities and as such can be used to promote reconciliation and national building.
- of particular importance are the efforts of the Directorate of Arts and Culture to implement the content of Article 19 into practice to combat the feeling of inferiority or superiority among the communities in Namibia, to mention but a few.
- High recognition is given to the heritage of the disadvantaged communities in order that their sense of human dignity can be restored and maintained.

The following Cultural Activities are being held every year throughout the country:

- Regional cultural festival
- National cultural festival, and
- Regional and national story-writing competition.
- Regional national song competition.

## **Article 18**

### **2.27 FAMILY AND MARRIAGES**

Article 14 of the Namibian Constitution provides that marriage shall be entered into only with the free and full consent of the intending spouses between man and woman of full age without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status.

Civil Marriages in Namibia are regulated by the Married Persons Equality Act, Act 1 of 1996. Both men and women of 18 years and older, have the right and are allowed by law to marry and found a family. The most important aspect of the Act is the abolishment of the common law rule, which means that husbands have no marital power over their wives. The effect of the changes was that married women became fully emancipated; they have the rights to enter into contractual agreements, own property, acts as directors of companies and bind themselves as surety without the consent of their husbands.

Customary laws do not set a minimum age for marriage, but marriage generally does not take place before puberty, or before the attainment of an acceptable level of social maturity. Family (parents) consent is required for a marriage to proceed, but lately (in most communities) the consent of both the

intended spouses is necessary as well. A customary law marriage involves a series of negotiations between the two family groups and creates rights and responsibilities between family members. Customary law marriages never enjoyed legal recognition prior to Independence in 1990, primarily because of their polygamous nature. Currently the LRDC has drafted a piece of legislation on recognition of customary law marriages which is before the public and other stakeholders for consultations.

## Article 20

### 2.28. THE RIGHT OF CITIZENS TO SELF DETERMINATION AND POLITICAL STATUS.

Only at independence did the Namibian people emerge from colonialism which lasted for more than a century. The elections in 1989 elected representatives of different political parties to the Constituent Assembly, which, in a spirit of tolerance and reconciliation, drafted Namibia's Constitution.

The Namibian Constitution establishes the country as a “...*Sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all*” with a multi-party system of government. It designates three branches of Government; the executive, the Legislature and the Judiciary.

Since independence, Namibia has successfully completed the transition from white-minority-apartheid rule to Parliamentary (multiparty) democracy which has been maintained through periodic and regular elections. Local, regional and national elections are held regularly every 5 years. The Founding President Dr. Sam Nujoma served for 15 years, while the current president, His Excellency President Hifikepunye Pohamba took the reigns of power in 2005 and he is serving his last 5 (five) years of the two terms of office in terms of the Namibian Constitution.

The level of professionalism in the Namibian Parliament is remarkable and admirable. Various Standing Committees were established by the Namibian parliament most of which function as legislative review Committees. The Committees are responsible for gathering and organizing public hearing on new and pending legislation. This committee system created and increased the opportunities for citizen to participate in the legislative process. Extensive public hearings have been held since 2000 on legislation such as the Education Act, Community Courts Act, Communal Land Reform Act and the Combating of Domestic Violence Act. These public hearings enabled the public and the civil society organizations to participate and provide recommendations to improve legislation.

Namibia held Presidential and National Assembly elections on 27 and 28 November 2009. International and domestic observers characterized both elections as free and fair, reflecting the will of the electorate. Eight opposition parties won a total of 18 seats. However, some aggrieved opposition parties approached the High Court alleging that the Electoral Commission had violated the election laws during the counting process as a result of which they applied to the High Court for the recount alternatively to declare the election results null and void. The election petition is pending before court after their appeal to the Supreme Court against certain orders of the High Court was upheld. Meanwhile all the elected members including those opposition parties who had challenged the November election results have been sworn in and taken up their seats in Parliament.

## **Article 21 and Article 22**

### **2.29. NATURAL RESOURCES AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

Article 100 of the Namibian Constitution provides that the sovereign ownership of all natural resources in Namibia including water shall belong to the State if they are not otherwise lawfully owned. The right to own property is also constitutionally protected under Article 16, subject to the possibility of expropriation if just compensation is paid. The Namibian Constitution stipulates that the expropriation of property shall be in accordance with the law and subject to just compensation.

The Constitution provides further for the establishment of a National Planning Commission (NPC) in the Office of the President, whose task is to plan the priorities and direction of national development. The Director-General of the NPC is a member of Cabinet and he attends Cabinet meetings. He acts as the president's chief financial adviser. The NPC secretariat was set up shortly after independence and the enabling legislation for the Commission was passed in March 1994.

Namibia acceded to the Convention concerning the Protection of World Cultural and National Heritage.

In 2004, Namibia adopted Vision 2030, a document that spell out the country's development aims and strategies to achieve the national objectives of the Vision by the year 2030. The Vision focuses on 8 (eight) areas to which the efforts of the Government, private sectors and NGO's should be directed to realise those goals such as:

- Inequality and social welfare
- Human resource development and institutional capacity building.
- Macroeconomic issues
- Population, health and development
- Namibia's natural resources Sector
- Knowledge, information and technology, and
- External environmental factors

## **Article 23**

### **2.30. PEACE AND SECURITY**

Namibia experienced political stability, peace and tranquillity with one exceptional case of the attack at Katima Mulilo town by the Secessionists that took place in the north-eastern Caprivi Region in 1999, which was carried out by a few dozen armed people from one village in that region. The group was misled by their exiled leader Mr. Mishake Muyongo, a former member of the Constituent Assembly, National Assembly and a leader of the then main opposition party from 1990 until 1998 when he was not re-elected as President of the then main opposition party. He has been given asylum in Denmark where he continues to organise and pursue his ideas to secede the Caprivi region from the rest of Namibia, which is illegal in terms of the laws of Namibia.

#### **High treason case**

Refer to paragraph 2.8 supra for full discussion and detailed information on the case

## Article 24

### 2.31. PROTECTION OF THE ENVIRONMENT IN NAMIBIA

Namibia is one of the few countries in the world that give constitutional protection of its environment. Article 91 (c) and Article 95 (1) of the Namibian Constitution which provides *inter alia* that the duty of the Ombudsman is to investigate complaints concerning:

- the over utilization of the living natural resources,
- the irrational exploitation of the non-renewable resources,
- the degradation and destruction of the ecosystems and failure to protect the beauty and character of Namibia;
- maintenance of ecosystems,
- essential ecological processes and biological diversity of Namibia and the utilization of the living natural resources on a sustainable basis for the benefits of all Namibian, both present and future generation.

Namibia has legislative framework that provides for the safeguarding and protection of the environment. Parliament passed legislation to regulate and protect the environment. 9

The closure of Ramatex, an international text tile company was a welcome move to the residence of Katutura a township in Windhoek where the factory was built. The technology used by Ramatex to dispose of the waste water was inadequate and as a result it polluted the city's water resources. Waste water containing a high salt content was pumped into the ground, contaminating the underground water with toxins from the wet processing section at the plant. Streams stemming from the factory carrying contaminated water threatened to pollute the water at the Goreangab Dam, one of Windhoek's major reservoirs.

## Article 25

### 2.32. HUMAN RIGHTS EDUCATION

The enforcement of fundamental rights and freedoms is provided for in article 25 of the Namibian Constitution. Article 25 (2) of the Constitution provides that:

*"...aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advise as they require, and the ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient".*

Whilst Article 5 of the Constitution oblige the three organs of the state, to uphold and respect the fundamental rights and freedoms spelled out in chapter 3, the Ministry of Justice has the final responsibility for promotion and protection of human rights on behalf of the government. The Ministry has a number of programmes which focuses on human rights, administration of justice, and combating corruption. The ministry has in collaboration with UNAM set up the Human Rights Documentation Centre (HRDC) at the Faculty of Law to promote a culture of supporting the rule of law and protection of human rights.

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9 See endnote 6 hereto.

Legislation and other laws are published in the Government Gazette on promulgation and readily available at the Ministry of Justice and at most libraries including the parliament library at a minimal fee.

In terms of the Constitutional mandate, the Ombudsman has a two pronged approach in dealing with human rights issues. The first approach is to investigate the complaints against the violations of human rights, and the second approach is through outreach programmes and public education with which the Office of the Ombudsman has recently been very actively involved.

## **Article 26**

### **2.33. INDEPENDENCE OF THE JUDICIARY**

Article 78 of the Namibian Constitution establishes the judiciary as the third organ of State. It consists of the Supreme Court, High Court and the Lower Courts. The Constitution gives the courts, especially the Supreme Court the important function of maintaining checks and balances between the two other organs of State, and the protection of the rights of individuals as provided for in the Bill of Rights. Article 78 further protects the Judiciary in very broad unambiguous terms including its protection from interference by members of the Executive or Legislative branches of the State or any other person. Therefore the independence of the judiciary is constitutionally guaranteed and respected.

Judicial independence has been strongly held up in Namibia. In many instances where Government is a party to proceedings it tends to lose cases involving political issues, elections and human rights cases. This is clearly an indication that the Government has not politicised the bench via appointments of Judges.

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## ENDNOTES

1. See list of cases in Annex II hereto
2. *“Unless otherwise provided by this constitution or Act of parliament, the general rules of public international law and international agreements binding upon Namibia under this constitution shall form part of the law of Namibia”.*
3. *“(1) All persons shall be equal before the law.*  
  
*(2) No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.”*
4. Namibian legislation in support of the rights of the child:
  - Children’s Act No 33 1960, which makes it an offence for parents or guardian or custodian of a child “cause or conduce or allow a child to reside in a brothel”
  - The Age of Majority Act No 57 of 1972, which sets the age of majority at 21 years
  - Combating of Immoral Practices Act No 2 of 1980, which prohibit prostitution and possession of pornographic material
  - Education Act No 16 of 2001, which provides for exemptions children who cannot afford to pay school fees.
  - Combating of Domestic Violence Act No 4 of 2003, which protect children against defined forms of domestic violence.
  - Maintenance Act No 9 of 2003, which places legal duty on parents to maintain their children and provides enforcement mechanisms for defaulters
  - Criminal Procedure Amendment Act No 24 of 2003, which classifies children as vulnerable witnesses in court
  - Prevention of Organized Crime Act No 29 of 2004, which addresses child trafficking.
  - The Labour Act No 11 of 2007, which prohibit child labour.
5. Namibian legislation in support of gender equality:
  - Affirmative Action (Employment) Act No 29 of 1998, the purpose of this law is to achieve equal opportunity in employment in accordance with the provisions of the Constitution. The Act aims to redress the disadvantages arising from past discriminatory laws and practices through appropriate affirmative action plan for three designated groups; such as persons from racially disadvantaged groups, women, and persons with disabilities.
  - Combating of Rape Act No 8 of 2000, the Act provides an extensive definition of rape that focuses on acts of coercion (force) used by the accused. The definition also covers a broad range of invasive sexual acts. The Act is gender-neutral so that boys and men can now lay charges of rape. The Act represents a progressive new approach to the crime of rape. It prescribes stiff minimum sentences for rape. It gives the complainant (the rape victim) the right to participate in bail proceedings, and imposes bail conditions to give greater protection the rape victim and to protect the complainant’s privacy. The Act requires that rape cases must be heard in closed court and prohibits publications of the information which could reveal the identity of the rape victim.

- Traditional Authorities Act No 25 of 2000, the Act places a duty on traditional authorities to promote affirmative action amongst the members of that community, particularly by promoting women to positions of leadership.
- Communal land Reform Act No 5 of 2002, the Act governs the allocation of communal land. It provides that widows have a right to remain on communal land allocated to their late husbands, even if they remarry. It further provides that women must be presented on the communal land Boards to monitor the implementation of the Act.
- Combating of Domestic Violence Act No 4 of 2003, the Act gives an extensive definition of domestic violence, including physical, sexual, economic, verbal, emotional and psychological, intimidation and harassment. It also defines who is in a domestic relationship. It provides for the issuing of protection orders and police warnings in domestic violence matters. It also has provisions which should give added protection to complainants that lay criminal charges against their abusers. The Act gives police specific duties in domestic violence incidents, including the duty to help complainants get access to medical treatment and collect their personal belongings.
- Maintenance Act No 9 of 2003, the Act stipulates that all parents have a legal duty to maintain their children. Both parents share responsibility for the support of their children, regardless of whether the children are born inside or outside of a marriage and regardless of any contradictory rules under customary laws. The Act sets out procedures for holding maintenance enquiries and for enforcing maintenance orders.
- Labour Act No 11 of 2007, the replaces the 1992 Act, it makes more generous provisions for maternity benefits than the old Act. It outlaws discrimination in workplaces on the basis of pregnancy and HIV/AIDS status for the first time, and it prohibits sexual harassment and includes a more clear definition of sexual harassment.
- The Prevention of Organized Crime Act No 29 of 2004, the Act specifically criminalizes trafficking in persons, slavery, kidnapping, and forced labour, including forced prostitution, child labour, and alien smuggling. However, there are no reports that persons were trafficked to, from, and within the country.

6. Namibian legislation in support of safeguarding and protection of the Environment:

- **The Nature Conservation Act, Act No 5 of 1996** as amended, which introduced the concept of Conservancies into the management of the natural resources.
- **The Forest Act, Act No 12 of 2001**, which provides for the establishment of Community Forest so that the community themselves can manage the natural resources for their own benefit on sustainable basis.
- **The Traditional Authorities Act, Act No 25 of 2000**, which provides certain powers, duties and functions to the Traditional Authorities and their respective communities to ensure that they use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment for the benefit of all the persons in Namibia.
- **The Environmental Management Act, Act No 7 of 2007**, which provides for the establishment of Sustainable Development Advisory Council, appointment of the Environmental Commissioners and Environmental Officers.

## ANNEX I

### MAJOR INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS RATIFIED OR ACCEDED TO BY NAMIBIA

- International covenant on Economic, Social and Cultural Rights (ICESCR), on 28 February 1995
- International covenant on civil and political rights (ICCPR), on 28 February 1995
- Optional protocol to the ICCPR, on 28 February 1995
- 2<sup>nd</sup> Optional protocol to the ICCPR, on 28 February 1995
- International convention on the Elimination of All Forms of Racial Discrimination (CERD), on 11 November 1982
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), on 28 November 1994
- International convention on the suppression and punishment of the Crime of Apartheid, acceded on 11 November 1982
- Convention on the Prevention and punishment of Crimes of Genocide, acceded on 28 November 1994
- Convention relating to the status of Refugees, Accession on 17 February 1995
- Protocol relating to the status of Refugees, 17 February 1995
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), on 23 November 1992
- Optional protocol to the Convention on the Elimination of Discrimination against Women, on 22 December 2000
- Convention on the Rights of the Child (CRC), on 30 October 1990
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 16 April 2002
- Convention on the Rights of person with Disabilities, 2006
- Optional protocol to the Convention on the Rights of persons with Disabilities, 2006
- African Charter on Human and People's Rights, on 30 July 1992
- Protocol relating to the Establishment of the Peace and Security Council of the African Union, on 19 November 2003
- Protocol to the African Charter for Human and People's Rights on the Rights of Women in Africa, 2003
- African Children's Chapter, 23 July 2004
- OAU Convention governing the specific aspects of refugee problems in African, accession on 2 September 1992
- African Youth Charter, on 31 May 2009

**ANNEX II****NAMIBIAN LEGISLATION SUPPORTING HUMAN RIGHTS INSTRUMENTS ENACTED SINCE THE LAST PERIODIC REPORT**

- War Veterans Subvention Act No 16 of 1999
- Racial Discrimination Amendment Act No 26 of 1998.
- Affirmative Action (Employment) Act No 29 of 1998
- Combating of Rape Act No 8 of 2000
- Combating of Domestic Violence Act No 4 of 2003
- Traditional Authorities Act No 25 of 2000
- Communal Land Reform Act No 5 of 2002
- Maintenance Act No 9 of 2003
- Children Status Act No 6 of 2006
- Labour Act No 11 of 2007
- Education Act No 16 of 2001
- Community Courts Act No 10 of 2003

## ANNEX III

## NAMIBIAN CASE LAW ON THE PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS BY THE JUDICIARY

1. **Namunjepo and Others v Commanding Officer, Windhoek Prison and Another 2000(6) BCLR 671 (Nms) (Reported in the Namibian Law Reports)**
2. **Muller v The President of the Republic of Namibia and Another 2000(6) BCLR 655 (NmS) (Reported in the Namibian Law Reports)**
3. **Julius v Commanding Offer, Windhoek Prison and Others; Nel v Commanding Officer, Windhoek Prison and Others 1996 NR 390 (HC)**
4. **Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC); 1991 (3) SA 76 (NmS) (Reported in the Namibian Law Reports)**
5. **Kauesa v Minister of Home Affairs and Others 1995 NR 175 (SC); 1996 (4) SA 965 (NmS)**
6. **S v Heidenrich 1995 NR 234 (HC); 1996 (2) SACR 171 (Nm)**
7. **S v Katamba 2000 (1) SACR 162 (NmS) (Reported in the Namibian Law Reports)**
8. **S v Mbahapa 1991 (4) NR 274 (HC)**
9. **S v Scholtz 1998 NR 207 (SC)**
10. **S v Shikunga and Another 2000 (1) SA 616 (NmS) (Reported in the Namibian Law Reports)**
11. **Fantasy Enterprises CC t/a Hustler The Shop v The Minister of Home Affairs and Another 1998 NR 96 (HC); Nasilowski and Others v The Minister of Justice and Others 1998 NR 97 (HC)**
12. **S v Kau and Others 1995 NR 1 (SC)**
13. **Myburgh v Commercial Bank of Namibia (Reported in the 1999 Namibian Law Reports)**
14. **S v Likuwa 1999 (2) SACR 44 (Nm) (Reported in teh 1999 Namibian Law Reports)**
15. **S v Tcoeib 1996 (1) SACR 390 (NmS) (Reported in the 1999 Namibian Law Reports)**
16. **Government of the Republic of Namibia and Others v/s Mwilima and all the Other Accused in the Treason Trail 2002 NR 235 (SC)**

**RESOURCE LIST:****SURVEYS AND REPORTS**

1. Namibia Demographic and Health Survey 2000
2. Population and Housing Census 2001
3. Namibia Household income and Expenditure Survey 2003/2004
4. Report by Labour Resource and Research Institute, 2007
5. Namibia Labour force survey (2004, by H Jauch)
6. Iipinge and Lebean Survey (1997 University of Namibia)