



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

Distr.
GENERAL

CERD/C/NAM/12
26 September 2007

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION**

Twelfth periodic reports of States parties due in 2005

Addendum

NAMIBIA * **

[17 July 2007]

* This document contains the eighth to twelfth reports of Namibia, due on 11 December 1997, 1999, 2001, 2003, and 2005. For the fourth to seventh periodic reports and the summary records of the meetings at which the Committee considered the report, see document CERD/C/275/Add.1, CERD/C/SR.1169-1170.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Introduction

1. The present report is submitted pursuant to article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination according to which States Parties are required to submit periodic reports to the Secretary-General of the United Nations on measures taken to implement the Convention and the progress achieved.
2. This report covers the period 1997-2006 during which Namibia did not submit any periodic report.
3. The report will attempt to provide information valid up to 2006. However, the Committee during its consideration of Namibia's last report which was considered during the Committee's 68th Session between 13 and 18 August 1996, requested that the next report (this report) should be an updating report and should specifically address all the points raised in the concluding observations and other issues raised by individual Committee members during their interaction with the Namibian delegation during consideration of the report in 1996.
4. While every effort will be made to present the report in accordance with the Committee's guidelines on the format of State reports, many of the paragraphs will be devoted to responding to the Committee's observations and requests for additional information as contained in the list of issues which the Committee compiled after its 68th session from 31 July-18 August 2006.
5. The Report is compiled by the Ministry of Justice on the basis of information from Government sources, media reports and published reports by relevant non-governmental organizations.

I. GENERAL INFORMATION

6. Namibia is located on the South Atlantic coast of Africa between 17 and 29 degrees south of the Equator.
7. It shares borders with South Africa in the south, Angola and Zambia in the north and Botswana and Zimbabwe in the east. Two major deserts bound it, namely the oldest desert, the Namib, along the whole of the west coast, and the Kalahari, on the southern and central eastern border with Botswana. The Namib Desert stretches for about 2000 km through Namibia from southern Angola in the north to northern South Africa in the south over an average width of 200 km.
8. The surface land mass area of Namibia is 824, 268 square kilometers. It is the 31st largest country in the world, roughly the size of Germany and France combined. It stretches for about 1,300 km from south to north and varies from 480 to 930 km width from west to east.
9. Namibia has a relatively youthful population which the 1991 Population and Housing Census found to be 1.4 million. The projected current population is 1.8 million. The projected annual growth rate is 3.1 per cent. About 43 per cent of the total population is under 15 years of age and only 3.6 per cent over 65. Despite rapid urbanization, Namibia is still a mainly rural society with fewer than 30 per cent living in urban areas. Regional population densities vary enormously with almost two-thirds living in the northern regions and less than one-tenth living in the south.

10. English is the official language, but Namibia's relatively small population is extraordinarily diverse in language and culture. More than 11 languages are indigenous to Namibia. During apartheid, Namibians were often confined to particular regions where a specific language was spoken, however since that time urban migration and restructuring of the civil service has led to many languages now being spoken outside their specific region.

11. People commonly speak two or three languages. More than 50 per cent of the people speak Oshiwambo whereas Afrikaans, deriving from Dutch and originating in South African languages, is still widely used and functions as a lingua franca. Namibia also has a small number of Khoisan speaking people, known as the Bushmen or San.

12. Indigenous languages are included in the school syllabus at primary level, although English is the language of instruction at all other levels, and in education and official institutions. Among European languages spoken in Namibia are German, Portuguese, Spanish and French.

13. According to the 2003/2004 Namibia Household Income and Expenditure Survey (NHIES) 65 per cent of the population live in rural areas and 35 per cent in urban areas.

14. The population is estimated at 1,830,000 people consisting of approximately 1,195,677 (65 per cent) rural and 634,388 (34.7 per cent) urban.

15. Population distribution per region is as follows:

<u>Region</u>	<u>Population</u>	<u>Percentage</u>
Caprivi	86 437	4.7
Erongo	99 013	5.4
Hardap	68 194	3.7
Karas	62 465	3.4
Kavango	208 441	11.4
Khomas	258 504	14.1
Kunene	61 647	3.4
Ohangwena	236 748	12.9
Omaheke	56 037	3.1
Omusati	225 405	12.3
Oshana	170 190	9.3
Oshikoto	172 636	9.4
Otjozondjupa	124 283	6.8

16. Population by citizenship is as follows: an estimated 98 per cent of the total population are Namibian citizens. Less than 2 per cent of the population have other citizenship, among them Angolan, Zambian and South African.

Table 1**Population by citizenship**

Citizenship	Number	%
Namibia	1 800 383	98.4
Angola	9 549	0.5
Botswana	217	0.0
South Africa	4 432	0.2
Zambia	4 986	0.3
Zimbabwe	2 481	0.1
Other SADC	1 252	0.1
Other African countries	997	0.1
All other countries	5 321	0.3
Not states	381	0.0
Total	1 830 000	100

Table 2**Population by main language spoken in household**

Citizenship	Number	%
Khoisan	28 039	1.5
Caprivi languages	90 053	4.9
Otjiherero	148 990	8.1
Rukavango	215 082	11.8
Damara>Nama	192 281	10.5
Oshiwambo	950 381	51.9
Setswana	5 668	0.3
Afrikaans	149 196	8.2
German	9 993	0.5
English	22 969	1.3
Other European	7 580	0.4
Other African	2 043	0.1
Other	472	0.0
Not states	7 252	0.4
Total	1 830 000	100

17. The Government of the Republic of Namibia is formed in terms of the Namibian Constitution which was unanimously adopted by the 72-member Constituent Assembly on February 9, 1990.

18. Fundamental Human Rights and Freedoms are enshrined in the Constitution and the executive, legislature and judiciary and all other organs of Government are obliged to respect and uphold these human rights and freedoms.
19. The Constitution lays down the division of power between the executive, the legislature and an independent judiciary.
20. The executive branch of Government consists of the President, Prime Minister and Ministers. The President is elected by popular vote for a term of five years and can be re-elected for a further term of office.
21. The Constituent Assembly elected Dr Sam Nujoma as the first President of independent Namibia. He was re-elected as President in 1994. Late in 1999 the National Assembly amended the Namibian Constitution to allow a third term for the first President of Namibia and during the elections Dr Nujoma was re-elected by popular vote for a third term with an overwhelming majority.
22. The current President H.E Hifikepunye Pohamba was elected for a five year term in November 2004. He assumed office on 21 March 2005 and will serve until 20 March 2010.
23. The bicameral legislature consists of the National Assembly and the National Council. Members of the National Assembly are elected for a term of five years. The National Assembly consists of 78 members. A total of 72 of its members are elected by popular vote, while the Constitution allows the President to nominate 6 non-voting members to the National Assembly.
24. The National Council consists of 26 members, who are elected by and from the members of the 13 regional councils. They are elected for a term of six years. The National Council reviews bills passed by the National Assembly and recommended legislation on matters of regional concern.
25. The judiciary is independent and subject only to the Constitution and the law. A Supreme Court, a High Court, and a number of lower courts share the judicial power. To further consolidate constitutional democracy, our laws provide for the appointment of an Ombudsman on the recommendation of the Judicial Service Commission. The Ombudsman reports to the National Assembly on the exercise of his/her powers and functions.
26. Except for members of the Judiciary who are appointed, all members of the legislative and executive branches are elected. The Constitution provides for regular presidential and national assembly elections, regional council elections and local authority elections.
27. A Council of Traditional Leaders has been established in terms of the Council of Traditional Leaders Act No. 13 of 1997. The Council assists the President on issues related to communal land and traditional matters.

II. INFORMATION RELATING TO ARTICLES 2-7

Article 2

28. Article 23 (1) of the Constitution prohibits the practice of racial discrimination and the practice of the ideology of apartheid. Article 23 (1) further provides that legislative measures shall be taken through enactment of an Act of Parliament which shall render the practices of racial discrimination and its propagation criminally punishable by the ordinary courts.

29. Since the coming into force of the Constitution, the Parliament of Namibia enacted the Racial Discrimination Prohibition Act, act 26 of 1991. This is the principal legislation which criminalizes acts of racial discrimination and prohibits propagation of racial discrimination and the practice of apartheid.

30. However, since its enactment there have been very few prosecutions under the act, a situation which also concerned the Committee on the Elimination of Racial Discrimination which in its concluding observations sought reasons for this trend. The Committee sought information on measures that have been taken to ensure the full effectiveness of the 1991 Act and in particular section 18 thereof.

31. Section 18 of the 1991 Act has not been repealed or amended and is still applicable in its original form. All prosecutions in Namibia are initiated under the authority of the Prosecutor-General. All prosecutors are delegated to institute prosecutions subject to the control and direction of the Prosecutor-General. Section 18 is just an indication of how seriously Namibia considers contraventions under this act to be. The Prosecutor-General has to consider, and give her written authority to prosecute, each alleged contravention under this Act. The fact that the Prosecutor-General declines to prosecute means that in her opinion there is no case on which a reasonable Court will convict the alleged perpetrator. This however does not mean that any complainant has to accept the decision of the Prosecutor-General, should she decide not to prosecute. Like in any other criminal case which the Prosecutor-General declines to prosecute, any person who has a substantial and peculiar interest in the issue, such as for example all complainants in criminal cases, may institute a private prosecution. Section 18 of the Racial Discrimination Prohibition Act, 1991 therefore in no way whatsoever limits the rights of complainants who lay complaints and request criminal prosecutions, to be initiated under the act.

32. The effectiveness of possible prosecutions was further eroded in a series of decisions in the High and Supreme Courts which tested the constitutionality of the 1991 Act against other provisions of the Constitution, especially those which guaranteed free speech.

33. In *S v Smith NO and Others* 1996 NR 367 (HC) [also reported as *S v Smith NO and Others* 1996 (2) SACR 675 (NM) and *S. v Smith and Others* 1997 (1) BCLR 70 (Nm)], in a prosecution under section 11, the High Court of Namibia on 27 September 1996 declared the original section 11 of the Racial Discrimination Prohibition Act, No. 26 of 1991 unconstitutional and in conflict with Articles 21 (1) and (2) of the Constitution and allowed Parliament six months from the date of this judgment to amend section 11 (1) of the Racial Discrimination Prohibition Act so as to conform with the requirements set out in art 21 (2) of the Constitution, failing which the said section 11 (1) will become invalid ipso facto.

34. This meant that from 27 September 1997 until 21 September 1998 Namibia had no constitutional section 11 under which to charge alleged contraventions that would have fallen under its provisions. However, the prosecution authorities did institute prosecutions for *crimen injuria*.

35. The High Court held in *Smith No and others* 1996 (2) SACR 675 (NM) that section 11 (1) (b) did not impose reasonable restrictions on the right to free speech as contemplated in S.21 (2) of the Constitution.

36. In the *Smith No* case the High Court directed the State to amend Section 11 (1) (b) within six months. The High Court held per Frank J. that:

“the section was not carefully designed to achieve the objective in question” Secondly the section does not “impair” as little as possible” the right ... in question. Thirdly it is disproportionate as it stifles and inhibits public debate on issues which are important in Namibia e.g. affirmative action and historical assessments. It follows from the following that S.11 (1) is over-broad in that it embraces communication which may be prohibited as well as communications which is protected under Article 21 (1) of the Constitution”.

37. Following the decision in *Smith NO* Parliament enacted in 1998 the Racial Discrimination Prohibition Amendment Act No 26 of 1998 which sought to cure the defect in section 11 of the principal act.

38. The question as to whether section 11 of the Racial Discrimination Prohibition Act 1991 was in conflict with one of the fundamental rights guaranteed in the Constitution, to wit article 21 (1) was first considered by a full bench of the High Court of Namibia in the case of *Kauesa v Minister of Home Affairs and others* 1995 (1) SA 51 (NM). The High Court in that case held that the limitation on the exercise of Article 21 (1), right to free speech, which section 11 entailed did not conflict with Article 21 (1).

39. However, the Supreme Court in the same case held that indeed section 11 (1) limitation on the exercise of free speech in the name of curbing racial discrimination was over-broad and had to be curtailed.

40. The Supreme Court held that “it is important that courts should be strict in interpreting limitations to rights so that individuals are not unnecessarily deprived of the enjoyment of their rights”.

41. Article 21 (2) of the Constitution which contemplates limitation on the exercise of the right to free speech provides that the restrictions to be imposed must be shown to be reasonable.

42. In this regard the Supreme Court in *Kauesa v Minister of Home Affairs and others* stated on page 14 of the judgment:

“In this regard the principles of proportionality enunciated by the Indian Supreme Court, the European Court of Human Rights, the Canadian Courts and the United States Supreme Court are expressed in the Namibian Constitution by the requirement that such restrictions must be reasonable.”

43. On 21 September 1998 the Racial Discrimination Prohibition Amendment Act, No 26 of 1998 amended inter alia section 11 (1) of the Racial Discrimination Prohibition Act, 1991 to conform to the aforesaid judgement. It reads as follows:

“(1) No person shall publicly use any language or publish or distribute any written matter or display any article or do any act or thing with the intent to:

(a) Threaten or insult any person or group of person on the ground that such person belongs or such person belong to a particular racial group; or

(b) Cause, encourage or incite hatred between different racial groups or persons belonging to different racial groups; or

(c) Disseminate ideas based on racial superiority.”

44. The Racial Discrimination Prohibition Amendment Act, No 26 of 1998 also inserted the following in section 14 (2) of the 1991 Act:

“(2) No person shall be convicted of an offence under subsection (1) of section 11:

(a) If the act complained of was, at the time of the commission thereof, relevant to any subject of public interest, the discussion of which was for public benefit, and if on reasonable grounds such person believed the statement or statements concerned to be true; or

(b) If such person, in good faith and with the intention of removing matters tending -

(i) To threaten or to insult any racial group or any person belonging to such racial group; or

(ii) To cause, encourage or incite hatred between different racial groups or between persons belonging to different racial groups, pointed out such matters; or

(c) If it is established that the language, publication or distribution complained of communicated the truth and that the main purpose thereof was to so communicate the truth and not to cause any of the acts referred to in that subsection.”

45. As can be seen from the amended section 11 (1) it no longer prohibits:

(a) The ridicule of any person or group of persons on the grounds that such person belongs or such persons belong to a particular racial group as originally provided for in section 11 (1) (a) of the act;

(b) The causing, encouraging and inciting of disharmony or feelings of hostility or ill will between different racial groups or persons belonging to different racial groups as originally provided for in section 11 (1) (b).

46. Due to the fact that this section is narrower than the one originally promulgated, the Office of the Prosecutor-General in most instances, rather than risking a prosecution faltering because of the available defences or because the State cannot prove the elements of publicity or causing, encouraging or inciting hatred between different racial groups, instructs prosecution for the common law crime of *crimen injuria*. *Crimen injuria* is defined as follows: “*Crimen Injuria* consists in unlawfully, intentionally and seriously impairing the dignity of another.”

47. Since the decisions in *Smith* and *Kauesa* and the subsequent enactment of the Racial Discrimination Prohibition Amendment Act 1998, a number of dockets were opened by the police and were submitted to the Prosecutor-General for decisions on the charges to be preferred on the facts presented by the Police as possible transgressions of the Racial Discrimination Prohibition legislation.

48. It is apparent from an examination of the number of cases referred to the Prosecutor-General that many of the reported cases were not considered to amount to racial discrimination cases, but rather *crimen injuria* or assault cases. However, it is a matter of concern that there is such a wide gap of perception between the police and the Prosecutor-General about what conduct constitutes the elements of a racial discrimination case. It may be necessary for the Prosecutor-General to issue a directive to enable the police to properly identify racial discrimination cases and to ensure that they bring forward the relevant evidence.

49. In addition to cases which were reported to the Police with a view to possible prosecutions, individuals were also at liberty to request the intervention of the Ombudsman to assist them in overcoming any racial discrimination they were experiencing.

50. The Ombudsman has a constitutional and statutory responsibility to call public and private institutions to order whenever they are guilty of acts of racial discrimination, as part of its enforcement of fundamental human rights.

51. From the last report in 1996 to date, the Office of the Ombudsman has only received three substantive racial discrimination complaints. They are described below.

52. Complaint against one of the major banks: the complainant was in fact the bank manager, who informed the Ombudsman that the Ministry of Home Affairs had not attended to the extension of his work permit, despite the fact that it was submitted in good time. Enquiries at the Ministry revealed that complaints of racial discrimination were received against the applicant, that being the reason for the delay. A full-scale investigation was launched into the racism allegations and the Ombudsman found the following:

(a) That the allegations against Mr. X have some substance in the sense that his attitude and remarks generally showed his intolerance for black people in particular and Namibians in general;

(b) That, while some of his actions and decisions may have been the result of international discrimination, others were nevertheless influenced by apparent prejudices which have a discriminatory effect;

(c) That much depends on management and how they want to carry out their tasks of balanced structuring. It cannot be stated with certainty that there are deliberate attempts to exclude certain staff members on a racial basis, however, there was certainly enough evidence derived from the organizational structure, coupled with the fact that many practices point to a corporate culture reflecting inheritances from the past, to come to such a conclusion;

(d) That human relations between Mr. X, staff and customers had been very poor and resulted in feelings of distrust and discrimination;

(e) That recruitment and selection practices at the bank have the ring of discrimination. Merely applying rules and regulations as if they are neutral, is to miss an essential point. If the effect of those seemingly neutral rules and regulations are to exclude black people and women, then the allegations of discrimination will continue to be justified. The investigation revealed that Mr. X was not in the least interested in affirmative action and although partly assisted by the structure he found, he made no attempt to change that, which was possible to do in his position as a senior manager.

53. Following the findings of the Ombudsman, and in order to foster good human and interpersonal relations, the following recommendations were made:

(a) Managers should be exposed to a new way of thinking and accept that the past is over and that a new society is in the making where mutual respect, tolerance and acceptance are the benchmarks for good management practices;

(b) Induction courses should be offered to all employees of the bank in order to ensure that theory (what is on paper) becomes practice (internalized and personalized in the minds of all) as it may help to foster better human relations;

(c) Consider organizing courses, involving all managers and staff, in human relations, labour relations and human rights, as some of the problems experienced by the staff hinge upon the working relationship with supervisors and between the different racial groups. Trust needs to be harnessed and credibility restored if morale at the bank is to be raised;

(d) New management concepts, such as investment in people and managing diversity within organizations need to be applied within the bank;

(e) People of all races and sexes must be appointed at all levels to reflect the diversity within the organization and to avoid situations of "them" and "us";

(f) The concept of affirmative action needs to be fully explained and understood since, it seems, there are still many staff members especially at senior levels who do not or do not want to understand and follow the letter and spirit of the Constitution;

(g) An internal complaints mechanism, if non-existent, should be established and staff should be allowed to air their grievances without fear of victimization;

(h) Management should deal in a timely manner with grievances within the organization and with the culprits;

(i) Disciplinary hearings should be conducted in such a manner that the employees feel that they are fairly and justly treated. In addition, the composition of disciplinary committees (which are currently composed of white managers) must become representative to avoid any perception of bias.

54. Against a restaurant owner: an American tourist approached the Ombudsman with a complaint that he was discriminated against by a local restaurant owner, in that the restaurant owner treated him disrespectfully and asked him to leave. The reason why he felt discriminated against was because he was the only person of colour in the restaurant and he was of the opinion that the restaurant owner wanted only white people in the restaurant. The matter was investigated and it was found that the complainant was in fact the one who behaved badly; he refused to eat his food, saying it was not well prepared; he swore at the restaurant owner and refused to pay his bill; as a result, the restaurant owner asked him to leave. They apologized to each other and agreed that they had both overreacted

55. Complaint against a lodge owner:

(a) The complainant approached the Ombudsman with a complaint that he and his colleagues were discriminated against by a local lodge owner. The reason why he felt discriminated against was because the owner's "face told us that we are not welcome at the bar", he told them to leave his "fucken" bar, that he is the boss (*baas*) and "they experience that the Afrikaner guests were treated differently";

(b) The matter was investigated and it was found that not much was in dispute. It is generally agreed that the complainant and his colleagues entered the bar with 2 litres of soft drinks which they had bought somewhere else. The owner told them that they were not allowed to consume drinks in his bar which they had bought somewhere else. The owner took their soft drinks and glasses and placed them outside the bar. According to the owner he only put their drinks and glasses outside the bar after they ignored his repeated requests not to consume drinks bought somewhere else. Thereafter they left the bar, collected their luggage and went without paying their account for the accommodation. According to the complainant, the owner demanded them to leave the place while saying, "It is my fucken place, and I will decide". He refused to pay the account because of the ill-treatment and because the owner said that they should "fuck out";

(c) It was found that the owner was entitled to enforce rules pertaining to the consumption of drinks brought onto the premises from elsewhere. In the complainant's own words, the owner may have "ill-treated" them, but it was found that he never discriminated against them.

56. The Government of Namibia, through the adoption of the policy of national reconciliation at independence, encourages mutual tolerance, acceptance and coexistence of Namibia's diverse cultural, ethnic and racial groups to live together in harmony as a single nation with a common loyalty to a single State. It promotes the development of integrationist multiracial organizations and movements by specifically proscribing racially based associations.

57. As contemplated in article 23 of the Constitution, the Government has taken special and concrete measures to ensure the adequate development and protection of certain racial groups or

individuals belonging to them, in order to guarantee them the full and equal enjoyment of human rights and fundamental freedoms. In this regard, the Government has enacted several legislative measures in the social, economic and cultural fields to specifically affirm and advance these groups or individuals.

58. The Government also pursues policies designed to promote the development of small businesses by making training and loan schemes available to persons who were previously disadvantaged by past discriminatory policies, so that they can set up their own businesses.

59. The Government is also working on a transformational economic and social empowerment policy which is designed to promote acquisition of business interests by previously disadvantaged groups. This policy has not yet been implemented but its promotion has served as a catalyst to recent empowerment initiatives in sectors such as the insurance industry. Thus foreign-owned businesses are slowly opening up their shares for ownership especially by black Namibians.

60. Other affirmative measures are applied through the procurement policies for Government services. This is done through the allocation of preference points to suppliers who hold a certain percentage of Namibian shareholdings, employment of Namibians, and those who implement affirmative action policies in their recruitment and structures of management.

61. A number of local authorities also apply affirmative action policies in employment and procurement of services.

Socio-economic empowerment measures for marginalized communities

62. Apart from requesting information on the implementation of the rights set out in article 5, the Committee requested information on the enjoyment of socio-economic rights affecting marginalized communities, particularly the San.

63. The Government of the Republic of Namibia has over the years pursued policies and implemented various programmes for the specific improvement of the living standards of persons from marginalized communities, as part of the constitutionally sanctioned measures to redress past socio-economic imbalances in the Namibian society.

64. The Government recognized early in its formative years after independence that certain communities needed specific empowerment programmes.

65. To this end, various Ministries ran their own sector-specific programmes for the benefit of marginalized communities. In Namibia, the San and Ovahimba were considered primary beneficiaries of Government empowerment programmes in diverse fields of socio-economic improvement.

66. In order to provide a more accurate picture of Government programmes for their communities since the last report, we provide an overview of programmes to address the needs of these communities in the areas of access to education, access to land, access to food, economic improvement and empowerment.

67. In a later section of this report, we shall provide an account of activities undertaken for the benefit of the San as part of the Government's San Development Programme.

68. With regard to ongoing improvement programmes which were implemented prior to the introduction of the San Development Programme in 2005, we report as set out hereunder.

Access to education

69. In order to promote access to education for marginalized communities the Government set up an Inter-sectoral Task Force to formulate policy guidelines on educationally marginalized children (EMC), to coordinate the activities of NGOs, Ministries, and other stakeholders regarding EMC. A policy document entitled "National options for educationally marginalized children" was formulated and adopted by Government in 1998.

70. EMC included children from the San community, the Ovahimba community and children in various urban centres. Reasons for the lack of access to school for these children are: poverty within the families; negative attitudes of those not marginalized; and high illiteracy rates of parents thus not valuing education.

71. In order to ensure that the Ovahimba children get access to education the Ministry introduced mobile school units. Co-operation between the Ministry of Education and the Namibia Association of Norway made it possible to run mobile school units for the Ovahimba community in Kunene Region. This intervention is aimed at providing access to education to the Ovahimba children without uprooting their traditional way of life.

72. The project uses temporary school tents to move school from one place to another in order to accommodate the nomadic life of the Ovahimba. A total number of eight units used as classrooms were put in place to cater for 3,755 children within the age range of six to fifteen years. Eighty teachers were identified and recruited from the Ovahimba community, and were given training in Instruction School Certificate to enable them to teach at these mobile schools.

73. In addition, 73 teachers have been enrolled with the Basic Education Teacher Diploma in-service programme (BETD INSET). A school feeding programme and flexible timetable is part of this intervention to encourage attendance. More than 72 per cent of the then identified children are in school.

74. Teacher training colleges apply affirmative action in their admission policies by prioritizing enrolment of more students from the marginalized communities. Windhoek and Ongwediva colleges of education have enrolled more Ovahimbas, the San, the repatriated Herero community from Botswana, HIV/Aids orphaned children and street kids. Also a greater number of female students have been admitted to the colleges of education.

Access to land

75. The National Conference on Land Reform and the Land Question in 1991 took a resolution which states that the land rights of disadvantaged communities should receive special protection. The San and disabled communities were specifically mentioned.

76. The National Resettlement Policy (2001) singles out the San as a specific target group for resettlement. The policy argues that “they need to be helped in realizing a new living by developing existing skills and acquiring new ones to be able to secure their livelihood.

77. To this end, the San have been resettled on a number of commercial farms which the Government acquired for purposes of resettling persons who hail from previously disadvantaged communities, as contemplated in article 23 of the Constitution.

78. The Ministry of Lands and Resettlement followed two distinct approaches to resettling those who needed to be resettled, namely group resettlement and individual resettlement.

79. The group resettlement scheme was the main form of resettlement in the early years of the Government’s programme.

80. At the time the Ministry was faced with a large number of landless persons, especially the San and former farm workers, who urgently needed support immediately after independence. These categories of beneficiaries were typically settled on farms inherited from other Ministries, donated to or purchased by the Ministry.

81. The Ministry also used some of the farms which it acquired for drought relief efforts in order to provide emergency grazing. However, as soon as they were allowed into the farms many settlers refused to leave after the drought. This made it difficult for the Ministry to plan its resettlement programme in an orderly manner. However, the Ministry now runs a number of project farms which represent a planned approach to group resettlement. The San community is a significant beneficiary of the Government group resettlement scheme. In this section of the report we highlight Government efforts in improving the living standards of the San through its resettlement programme.

82. It may be recalled that at the time of the last report the Committee observed that the San were only resettled on one farm. This was not the situation at the time and the number has certainly increased since the last reporting period.

83. The San Community empowerment projects are ongoing and have contributed to significant empowerment of the San. These programmes are now to be integrated into the national San Development Programme which has been implemented since 2005.

84. The primary responsibility of the Directorate of Resettlement in the Ministry of Lands and Resettlement is to implement a sustainable and fair redistribution programme that includes the provision of amenities and facilities to effectively improve the living standard of beneficiaries, especially previously disadvantaged and destitute Namibians, notably the San.

85. For the past few years the Ministry has embarked on aggressive social and economical programmes to bring the San people into the mainstream of food and economic self-sustainability and improve their livelihoods.

86. The objectives of the Government’s projects for the San are to:

- (a) Improve the livelihood situation of San people in the project area;

(b) Enable the San to acquire necessary farming skills and improve the livestock and production capacity of community stakeholders to manage and sustainably use these resources;

(c) Increase the food and income of San people in the project areas through particular farming activities.

87. In addition to these community projects, the Ministry has development projects in western Caprivi where San communities are involved in crop production for both their own consumption and for marketing. These development projects still enjoy the full support of the Ministry socially and economically.

88. The Tsintsabis and Bravo Small Stock Project is based in the Oshikoto region and is implemented with the assistance of a non-governmental implementing agency, Komeho Development Agency.

89. The aim of the project is to empower settled San speaking communities at both Bravo and Tsintsabis with resources (small stock) and skills that will contribute towards the enhancement of their livelihood. Quality rams and ewes were bought from different breeders in different regions and were provided to the intended beneficiaries.

90. A total number of 627 ewes were bought, 6 died while in transit or after delivery and 621 ewes were handed to the beneficiaries. The rams were respectively handed over on the 18 and 19 May 2004 to the two projects: Bravo received 5 rams whereas Tsintsabis received 15; at Tsintsabis 224 settled families received the ewes, i.e. 2 per family; and 86 at Bravo received goats, even though 86 families were earmarked to receive the ewes.

91. Theoretical training on general goat farming and practical demonstrations on the usage of veterinary equipment, which was handed to the established committees, was conducted on both projects and many follow-up training sessions have since been conducted by Komeho Namibia Development Agency.

92. Apart from small stock farming the community at the two projects also engaged in other activities, notably:

- Construction of houses (Bavaria and Ballaton houses);
- Brick-making;
- Gardening;
- Charcoal and firewood selling;
- Dress making (mini-project);
- Bakery (currently on hold);
- Orchards Komeho Development Agency provided fruit trees such as mangos, guavas and pawpaws. Three fruit tree seedlings were provided for project members at Tsintsabis and four for Bravo project members respectively.

Literacy programme (twice a week)

93. The Skoonheid and Drimiopsis Project is based in the Omaheke region and is administered and financed through the co-operation of Komeho Namibia Development Agency, the Spanish Government and the Government of Namibia.

94. The aim of the project is to empower settled San speaking communities at both Drimiopsis and Skoonheid with resources and skills that will contribute towards the enhancement of their livelihood. Quality land and needed inputs were bought from different suppliers and were handed to the beneficiaries of the project.

95. A total of 914 settled families received arable land for crop production and gardening, as well as for them to carry on with their daily activities to improve the situation of the marginalized and previously disadvantaged San communities in terms of food and economic sustainability.

96. It is expected that after a certain time of supporting this intervention, beneficiaries will be ready to take full charge of all procedures to continue marketing their products. It is essential to train beneficiaries of both resettlements in all subjects concerning the sale of production. Sixteen (16) beneficiaries received training from these two projects, which was conducted by Komeho Namibia Development Agency. Therefore, it is expected that each project will develop its own capacity to take over its production and marketing affairs once donor assistance stops. An amount of N\$ 50,300 was given to Komeho to train beneficiaries in all aspects of training in accordance with the San community's needs.

97. Other activities going on at the two projects include:

- Two sets of scales bought for the two projects, one of which was bought by the Spanish Government;
- Two rain gauges purchased;
- Gardening inputs (mainly vegetables);
- Provision of seeds by the Ministry;
- Literacy programme (ongoing).

98. The Mangetti dunes mixed farming project is situated in the Otjozondjupa region and was initially run with the support and involvement of non-governmental organizations. The Ministry of Lands and Resettlement has since taken over the running of the project.

99. Quality land and needed inputs were bought from different suppliers and were then handed over to the intended beneficiaries.

100. A total of 2,839 settled families received arable land for crop production totalling 900,000 hectares for them to carry on with their daily activities for the improvement of food self-sufficiency and economic sustainability of the marginalized and previously disadvantaged San communities.

101. Other activities going on at the two projects include carpentry, sewing, gardening and a literacy programme.

102. The Ekoka, Endombe and Onamatadiva San Community project is based in Ohangwena region and is run by the Ministry of Lands and Resettlement with the assistance of the Spanish Government.

103. Quality land and needed inputs were bought from different suppliers and were then handed over to the intended beneficiaries. Cuban experts laid the drip irrigation system for the gardens and distributed fruit tree seedlings for planting by the beneficiaries of the three projects.

104. A total of about 850 settled families received arable land for crop production and gardening, as well as needed inputs for them to carry on with their daily activities for the improvement of food self-sufficiency, economic sustainability and self-reliance of the marginalized and previously disadvantaged San communities. The Namibian Government gave livestock and ploughs whereas donkeys and donkey carts were given to the beneficiaries by the Spanish Government, which were distributed to these beneficiaries through the Ministry of Lands and Resettlement.

105. Beneficiaries received training from different stakeholders, on many farming practices (crops and livestock). Further training was offered in the field of basket-making, knitting, gardening, blacksmithing, carpentry and brick-making. Therefore it is expected that each project will develop its own capacity for the beneficiaries to take over production and marketing affairs once the donor and government assistance stops.

106. Other activities going on at the two projects include:

- Food for work programmes;
- Clothing distribution;
- Construction of houses for the beneficiaries;
- Literacy programme.

107. Members of the San community enjoy regular food provision from the Government through its drought relief programme.

108. In addition, where conservancies have been declared, the San are permitted limited hunting rights and also draw income from trophy hunting.

109. On resettlement farms, the San have been provided with basic start-up assistance in the form of seeds to start vegetable gardens, goats, cattle and draught animals for ploughing.

San Development Programme

110. The San Development Programme was introduced by the Deputy Prime Minister, the Hon. Dr. L. Amathila, at the beginning of 2005 after her inauguration as Deputy Prime Minister of the Republic of Namibia.

111. The initial stages of the process included visitations by the Deputy Prime Minister to various San communities across Namibia. These meetings were aimed at consultations with the San people on their needs and what they considered as pressing challenges facing them.
112. These consultations revealed that the conditions of living of the San are tragically dire, and that they lack basic social and economic infrastructure to meaningfully participate in national development programmes and processes.
113. The result was that the Deputy Prime Minister, representing the rank and file of the Government of the Republic of Namibia, decided that intervention to aid the improvement of the situation of the San was necessary. The foregoing contention was also deemed by the Deputy Prime Minister as an essential element of Vision 2030 as well as the national constitutional duty of government to serve all its citizens equally.
114. In November 2005, Cabinet took its decision No. 25/29.11.05/001 to develop a focused and dedicated programme for the development of the San communities in Namibia, to be known as the San Development Programme.
115. The programme would integrate the ongoing Hai//Om Development Programme under the Ministry of Environment and Tourism which aims to improve the socio-economic status of the San through the creation of conservancies. The San Development Programme is overseen by an ad hoc cabinet committee under the Office of the Prime Minister and chaired by the Deputy Prime Minister.
116. It is clear from the analysis in the above section of this report that the Government has over the years run various diverse programmes for the San people. The only difference now is that these programmes will be better coordinated and focused and be given the requisite high political profile in government priorities.
117. The Deputy Prime Minister undertook trips to all the areas where the San reside to familiarise herself with their living conditions and their needs, as seen from the perspective of the affected communities. The report on the trip revealed an enormous need for Government to do more to specifically advance the San by addressing their needs in terms of land and economic empowerment. The Deputy Prime Minister has specifically requested that land be made available for the exclusive purpose of settling the San.
118. During her visit the Deputy Prime Minister visited San settlements in Ohangwena, Oshikoto, Caprivi, Kavango, Omaheke and Otjozondjupa regions.
119. In the Ohangwena region, the Deputy Prime Minister visited Ekoka, Oshana Shiwa (new settlement), Onamadadiwa, Eendobe.
120. In the Oshikoto region, the Deputy Prime Minister visited Oshivelo, Farm 6, Tsintsabis, Excelsior Farm, Onankali, Omboto, Onamutoni, Halali.
121. In the Caprivi region, the Deputy Prime Minister visited Bitto Settlement, New Look (Mulanga), Pipo and Chetto, Musambo, Omega III.

122. In the Kavango region, the Deputy Prime Minister visited Omega 1, Bunya, Mukekete Village, Bravo Settlement, Kahenge Village, Rupara and Tondoro, Mupapama.

123. In the Omaheke region, the Deputy Prime Minister visited Donkerpos settlement, Sonneblom settlement, Tallismanus, Verge-noeg, Blouberg, Drimiopsis, Okatuuo, Otjimananombe, Omauezonjanda, Skoonheid, Otjinene, Okahungu (Koreses), Gobabis, Omongua, Corridor 12.

124. In the Otjozondjupa region, the Deputy Prime Minister visited Okamatapati, Okotjitundu and Okondjatu.

125. The total population of the settlements visited stood at 6,090.

126. Since the implementation of the San Development Programme the following activities/projects were implemented for the benefit of the San people in different parts of Namibia.

127. Beekeeping and honey production training programme (apiculture):

(a) Under this project, 12 San persons from six regions received training from instructors drawn from Kenya, and with financial support from the Icelandic Embassy. This was a successful training programme, which will see some of the deserving candidates visiting the Kenyan apiculture industry in the middle of 2006;

(b) The aim of such a visit will be to expose these entrepreneurs to the business side of the industry, so that they too can access the small loans scheme of the Ministry of Trade and Industry. On the 22 August 2006, the Deputy Prime Minister handed over beekeeping equipment to 10 San people from Oshikoto, Ohangwena, Kavango, Omaheke and Tsumkwe regions. The equipment acquired was purchased with an amount from the San Development Programme funds. The Ministry of Agriculture, Water and Forestry assisted with training on the use of the equipment and the persons appointed at the regional level for that purpose will do the follow-up on the projects;

(c) There is therefore potential, with the support of Ministry and Trade and Industry, for this programme to develop into a substantive empowerment vehicle for the San people.

128. Scholarships for learners:

(a) Four San learners from the Omaheke, Caprivi and Otjozondjupa regions were fortunate recipients of bursaries from NAMPOWER (the national power utility) and Michelle McLean Children Trust through the office of the Deputy Prime Minister. These scholarships will cover all the academic costs of these learners until the completion of their secondary education. However, there are strong indications that the scholarships may be extended to the tertiary level, which is extremely encouraging;

(b) The Office of the Deputy Prime Minister is fully sponsoring in total 41 San students at the University of Namibia, Polytechnic of Namibia, International University of Management, Vocational Training Center, Caprivi College of Education, Rundu College of Education, Namcol, secondary and primary schools in Namibia.

129. Provision of draught animals and seeds. A number of draught animals were already handed over to the San people in the Caprivi and Omaheke Regions. These included more than 70 donkeys in Caprivi and more than 10 heifers in the Omaheke regions respectively. Seeds for crop plantation and cultivation were also handed over to the San people in Caprivi. This assistance was facilitated by the Ministry of Agriculture, Water and Forestry through the Division of Rural Development which has been transferred to the Ministry of Regional and Local Government and Housing and Rural Development.

130. National Youth Service Scheme. Some 13 names of San youths were recently sent to the Ministry of Youth, National Service, Sport and Culture. The Ministry is very eager to recruit some San youth, as a way of contributing to the Programme. The provision of such names will have to become an annual process, so that a significant San intake can be achieved over a period of time. Currently the Office of the Deputy Prime Minister is facilitating the submission of names for the year 2007 through the offices of regional governors.

131. Employment. The Office of the Prime Minister had no San person on its staff. However, the belief at this Office has always been that all “national diversity” must be acknowledged through staffing. Thus, the Office has now employed four San persons at entry level positions, so that the national picture is complete. The above employment merely reflects the government contribution. It will be crucial in this regard, to co-opt the goodwill of the private sector to assist in sourcing employment for the San. The office of the Deputy Prime Minister has written to all regional councils to make sure that they make it possible to employ San-speaking Namibians. In addition, the office of the Deputy Prime Minister has facilitated the employment of 4 San people at Tsumeb Auto Tech Panel after the completion of their training at Windhoek Vocational Training Center and 9 San people with Namibia Wildlife Resorts, a Government-owned enterprise.

132. Donations. The following donations have been made:

(a) Standard Bank of Namibia has agreed to finance the Okaepe School Project with an amount of N\$70,000, to provide donkey carts, hostel fees and mattresses, as well as the Donkerbos school, which will benefit from an amount of N\$ 96,000;

(b) Other private sector companies and foreign agencies came on board to assist. For example, Embassy of the People’s Republic of China, Icelandic International Development Agency, Namdeb, Nedbank, Old Mutual, Rosh Pinah, Corporate Training Solutions , Red Cross, Omankete Investments (Pty) Ltd, Ark Fishing (Co), and many more;

(c) Various other smaller but highly valued donations have been received for the San people throughout the period under review;

(d) The Office of the Deputy Prime Minister facilitated donation of mattresses, blankets and clothes to the San community to the following settlements during the period under review:

- Tsintsabis (Oshikoto Region);
- Farm Six;

- Excelsior (Oshikoto Region);
- Oshivelo;
- Onankali;
- Okatjoruu Junior Primary School (Otjozondjupa Region);
- Tsumkwe Junior Secondary School (Otjozondjupa Region);
- Mile 20 (Okavango Region);
- Ben-Hur Primary School (Omaheke Region);
- Blouberg Primary School (Omaheke Region);
- Gquina Primary School (Omaheke Region);
- Skoonheid Kindergarten (Omaheke Region).

133. Other donations included the following:

- Glass for windows (N\$ 14,267.58) and 1 computer and printer to Motsomi Primary School (Omaheke Region);
- One computer, printer, table (N\$ 400), cabinet (N\$ 400), Chair (N\$ 585), opening of account (N\$ 300) - OSWYDO (Omaheke Region);
- One computer, printer and N\$ 3,000 - Donkerbos Primary School (Omaheke Region);
- Photocopier (N\$ 15,000), photocopier paper and transport (N\$ 2,127.50);
- White stone project (Tsumkwe West) - N\$ 3,046.70;
- Training in Bravo (Kavango Region) - N\$ 33,180;
- Feasibility Study for Excelsior Hostel (Oshikoto Region) - N\$ 14,744.23;
- Five pit latrines (bush toilets) - Tobias Hainyeko Primary School, Ekoka Kindergarten, Eendobe Kindergarten, Onamatadiva Kindergarten (Ohangwena Region) - N\$ 12,500;
- Okaepe Primary School (Otjozondjupa Region);
- Youth Training (Omaheke Region) - N\$ 30,505.40.

134. Bwabwata Game Reserve: the Ministry of Environment and Tourism has been engaged in discussions with the San community living in this area. The discussions were facilitated by the

Deputy Prime Minister. Briefly, the San people at this game reserve cannot benefit from park resources due to restrictive parks legislation. It has now been agreed that a Memorandum of Understanding (M.O.U) be signed by the Ministry and the Karamashyan Association which was formed by the San people. To this end, a high level ministerial delegation was to hold a consultative forum in April 2007 on site, with the San people, to expedite and finalize the process. The association was officially launched and the people started to benefit from the hunting rights. It is worth noting that the association will be transformed into a trust fund and they are ready to make their first contribution to the Game Products Trust Fund. This represents a major milestone for the San people, and they are now free to engage in the community conservancy programme.

135. Coffin manufacturing project: one of the projects that have been identified by the Office of the Prime Minister is the coffin manufacturing project for the San people. Currently our San people are being buried in plastic bags around the whole country as they cannot afford a coffin for their loved ones. The Government resolved to find ways and means to at least give them a dignified burial like all Namibians. The Government has therefore commissioned a company that provides training to San trainees with the idea for them to go back home and start up small manufacturing companies to produce coffins for their communities. We have started with Otjozondjupa region and would like to continue with other regions.

136. The Ministry of Environment and Tourism has acquired two farms on the outskirts of Etosha National Park for the purpose of turning them into conservancies for the benefit of the San community in the surrounding areas. According to an announcement by the Minister of Environment and Tourism which was reported in a local daily newspaper on 26 March 2007, the two farms will be developed into conservancies for the minority Hai//om clan of the San people. "This will create jobs and other income opportunities, leading to social improvement, poverty reduction and will enable our Hai//om community to farm on their own land", the Minister stated.

137. The Ministry of Environment and Tourism proclaimed the first conservancy known as Nyae Nyae conservancy in February 1998. This conservancy benefits about 1,000 San members who derive an income from tourism and trophy hunting.

138. Another conservancy at Tsumkwe West, to be known as the N= a Jagna conservancy is expected to be proclaimed soon.

139. State Subvention: the State provides N\$ 300,000 annually as a direct contribution to the San Development Programme. Additional resources are intended to be obtained from various stakeholders and donor agencies, through close cooperation with the National Planning Commission.

140. Technical Committee/Task Force: as directed by the Cabinet decision, the Programme is run by a technical committee consisting of identified Ministries and meets regularly to make sure that the Programme is successfully implemented.

141. Regional visits by the Hon. Deputy Prime Minister: during the period under review the Deputy Prime Minister visited various regions to continue her familiarization with the programme and hand over donations and various forms of assistance.

142. Projects: the Office of the Deputy Prime Minister is currently working with other Ministries and stake holders on various projects including:

- Resettlement programme;
- Aqua culture for San communities;
- Community garden projects - self sustainability;
- Social housing scheme for San communities;
- Hostel for Huigub School (Excelsior) - Oshikoto Region.

143. Proposed activities for the year 2007 include a back to school campaign:

- Adult literacy programme amongst the San people on “Survival Skills”;
- Recruitment of San children in sports academies;
- Identification of employment opportunities;
- Consultative workshop with various stakeholders;
- Awareness campaign on the integration of San people in the mainstream of our society.

Challenges

144. The challenges encountered during the implementation period are manifold and wide-ranging. The paramount challenge is that of financial shortfalls. Since the programme is new, its full funding only commenced in the 2006/7 financial year. Nonetheless, given the enormous scope of the intervention required by the Government to alleviate the plight of the San people, more resources are necessary to meet this challenge. As part of the process to overcome this predicament, and in line with the smart partnership drive, the private sector and the parastatals have been constantly making their valued contribution as and when approached for specific interventions.

Recommendations

145. It is recommended that:

- (a) There be an increase in the State subvention. Support from both public and private institutions is needed;
- (b) Additional manpower is provided to assist with the coordination and implementation of various projects;
- (c) Public participation in and awareness of the plight of the San people is increased.

Article 3

146. Namibia does not have territorial jurisdiction on any other territory beyond her borders.

Article 4

147. The Committee requested information on the measures which give effect to the provisions of article 4 of the Convention. Article 23 of the Constitution specifically provides that “The practice of racial discrimination and the practice of the ideology of apartheid ... shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary courts ...”. The Racial Discrimination Prohibition Act 1991, as amended by act 26 of 1998, is the principal legislative instrument which implements the prohibition and criminalization imperative of article 4 of the Convention.

148. The Committee requested information on measures taken to align the definition of racial discrimination in Article 10 (2) of the Namibian Constitution with the definition in Article 1 of the Convention. Article 10 (2) prohibits discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. On a proper reading Article 10 (2) appears to prohibit discrimination on the enumerated grounds which seem exhaustive. The discrimination impugned therefore does not extend to categories of persons of other nationalities or descent.

149. However, section 1 of the 1991 Act defines a racial group to mean a group of persons defined by reference to colour, race, nationality or ethnic or national origin. The definition in section 1 of the act of 1991 mitigates the otherwise discriminatory connotation of excluding national origin as a basis for discrimination contained in article 10 (2) of the Constitution. The legislature has thus extended the category of bases on which discrimination is prohibited to include nationality.

150. In line with article 1 (4) of the Convention, article 23 (2) permits the enactment of legislation and the taking of measures for the advancement of persons within Namibia who were disadvantaged by past discriminatory laws or practice.

151. Article 23 (2) specially provides that the prohibition on discrimination contained in Article 10 (2) of the Constitution shall not prevent Parliament from implementing affirmative measures in favour of designated previously disadvantaged persons.

152. However, the derogation from the non-discrimination prohibition is subject to satisfying the test of being a reasonable restriction as interpreted in numerous judicial decisions of the High and Supreme Courts. Affirmative measures envisaged are by definition of limited duration and the Convention provides that the measures shall not be continued after the objectives for which they were taken have been achieved.

Article 5

153. Article 10 of the Namibian Constitution guarantees equality before the law and freedom from discrimination in the enjoyment of rights. The article proscribes any discrimination on the grounds of sex, race, color, ethnic origin, religion, creed, social or economic status.

154. However, the prohibition against discrimination on any of the enumerated grounds shall not affect affirmative measures contemplated under article 23 (2) and (3) of the Constitution.

155. Article 23 (3) specifically envisages that discrimination in favour of women may legitimately be exercised in order to enable women to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

156. These apparent departures from the principle of non-discrimination are entirely consistent with Article 1 (4) of the Convention.

157. Similarly, given Namibia's historical legacy of discrimination and apartheid laws and policies which only advanced the white community, it is permissible under Article 23 (2) to enact legislation to advance previously disadvantaged persons.

158. The relationship between Article 23 (which allows for affirmative action policies to be implemented) and the prohibition against discrimination which is contained in article 10 (2) of the Constitution has been the subject of a number of High Court decisions. The leading case is *Kauesa v Minister of Home Affairs and others* 1995 NR 175 (SC); 1996 (SA) 965 (NmS).

159. Article 23 constitutes an express limitation to Article 10 in that it allows some form of discrimination in favour of persons from certain designated groups who were previously disadvantaged by past discriminatory laws. Article 23 (2) specifically and expressly provides that nothing contained in Article 10 "shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged ...".

160. Article 23 also permits implementation of policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society and achieving a balanced structuring of the public service, the police force, the defence force and the prison service.

161. The High Court held that affirmative action measures should not offend the dignity of the person, which is an unqualified right guaranteed in the Constitution. Affirmative action should also not be elevated to the status of a fundamental right. It should envisage necessary corrective measures and not revenge.

Affirmative action measures

162. The Committee in its list of issues requested information on the legislative, judicial, administrative and other measures which give effect to the affirmative action requirements contained in Article 23 (2) of the Namibian Constitution.

163. Article 23 (2) specifically provides that Parliament may enact legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices.

164. Government is also empowered to implement policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society arising from past discriminatory laws.

165. Government is also empowered to achieve a balanced structuring of the public services, the police force, defence forces and the prison service through the implementation of special redressing policies and programmes.

Affirmative Action (Employment) Act, 1998

166. Since the last report, the Government has enacted the Affirmative Action (Employment) Act, 1998 with the specific purpose of redressing discrimination and to advance the disadvantaged in employment in the public and private sectors.

167. Affirmative action programmes are carried out through affirmative action plans which employers are required to submit to the Employment Equity Commission for approval.

168. The Employment Equity Commission is composed of representatives of employers, employees and members of designated groups. The brief of the Commission is to monitor compliance with the law and to investigate complaints of discrimination in employment practices.

169. Upon approval, employers have to implement the plans which set out how they will advance previously disadvantaged groups in the hierarchy of the organization.

170. Affirmative action reports are required to be submitted in order to assess compliance with the plans agreed with the Commission.

171. Various penalties are prescribed for non-compliance, including prosecutions and denial of work permits and government procurement tenders.

172. The Employment Equity Commission commissioned an Action Impact Assessment Study in June 2004, to review the progress made towards equity in employment so far. Special attention was paid to changes in workforce profiles with regard to the representation of people from designated groups. The study also examined the measures taken by relevant employers; the extent of consultations that took place at the various workplaces; the services rendered by the Employment Equity Commission; as well as the achievements and shortcomings of the Affirmative Action Policy thus far. The report was launched by the Commission on 7 December 2004.

173. The report's findings generally confirmed the slow progress regarding the affirmation of persons in designated groups at most management and supervisory occupational levels across most industrial sectors. White males are still the dominant group at senior management level, although their share of middle management posts has declined to below 40 per cent. More significant changes occurred in the specialized/skilled/supervisory job category where black males have increased their share to over 40 per cent. Black women have also increased their share in this category but are still substantially underrepresented.

174. The job categories covering skilled, semi-skilled and unskilled workers are dominated by black males, who increased their proportionate share during the period under review. People with disabilities are hardly employed at all by relevant employers and there are only very few organizations that have taken concrete steps to accommodate them.

175. The Commission recently named 15 companies who were arraigned to appear before court for late submission or non-submission of reports. The offences cover the period 2001 to 2004.

Other affirmative action measures

176. Apart from the Affirmative Action (Employment) Act 1998, affirmative action provisions have been included in diverse pieces of legislation which have been adopted since independence, in which provision is made for advancing previously disadvantaged persons or females. These include the Agricultural (Commercial) Land Reform Act 1995 and the Married Persons Equality Act, 1996.

177. In addition to legislation, Ministries have also adopted policy directives which purport to apply corrective measures to redress social, economic or educational imbalances in Namibian society as contemplated in article 23 (2) of the Constitution. This explains the policies implemented to give effect to the balanced structuring of the public services, the police force, the defence forces and the prison service, which were effected without formal enactment of enabling legislation for the application of affirmative action in the restructuring of government prior to the enactment of the Affirmative Action (Employment) Act, 1998.

Enjoyment of article 5 rights

178. The Constitution guarantees non-discrimination in the enjoyment of the rights enumerated in article 5 of the Convention. The Committee in its concluding observations on the last report in 1996 noted that the last report did not contain information on the enjoyment of article 5 rights. With particular reference to the rights specified in the Convention, the Committee's attention is drawn to the following, regarding article 5 (a) on the right to equal treatment before the tribunals and all other organs administering justice:

(a) Article 12 of the Constitution guarantees all persons a fair trial in the determination of their rights and obligations. The courts have elaborated on the content of this in a number of cases over the years;

(b) The Government also enacted the Legal Aid Act 1990, which provides for State-funded legal aid to indigent persons (litigants) to be represented in court at State expense. While each one has a right to secure the services of a legal practitioner at his/her expense, the legal aid scheme enables an indigent person to secure such services with the assistance of the State.

179. In *Mwilima and others* case No. SA 29/2001 the Supreme Court directed the provision of legal aid to accused persons as a measure for securing the accused a fair trial.

180. Also on the right to a speedy trial, see:

- *S v. Amujekele* 1991 NR 303 (HC);
- *S v. Uahanga* 1998 NR 160 (HC);
- *S v. Heidenreich* 1998 NR 229 (HC);

and on adequate facilities to prepare a defence, see the following:

- *S v. Scholtz* 1996 (2) SACR 426 (NMS);
- *S v. Angula* 1996 NR 323 (HC);
- *S v. Lukas* 1996 NR 323 (HC);
- *Koortzen v. P.G* 1997 NR 188 (HC).

Measures relating to the guaranteeing of the right to fair trial of persons detained in relation with the Caprivi secessionist attack

181. Article 12 of the Namibian Constitution as read with Article 95 (h) provides for the right to a fair trial in which the Directorate of Legal Aid is tasked to provide adequate legal representation in defined cases with due regard to the resources of the State. With regard to the high treason case pending before the High Court in Namibia, the Directorate of Legal Aid in the Ministry of Justice appointed nine legal practitioners to represent all the 120 accused persons facing various charges of high treason, sedition, murder, attempted murder and other charges. All the legal practitioners appointed were carefully selected, and met the very high standards expected of counsel undertaking such a complex trial. Each appointed legal practitioner had at least ten years experience in the criminal court, in particular the High Court.

182. Before appointing the said legal practitioners the Directorate of Legal Aid, with the assistance of two senior counsel from the Namibia Society of Advocates, conducted a screening process to determine whether or not there was a conflict of interest among the accused, before deciding on the actual number of legal practitioners to be appointed. It was also necessary to determine the precise number of accused in each group for the purpose of deciding how many accused would be represented by each legal practitioner. Due to the complex nature of the charges faced by the accused, the number of charges each accused person faces, as well as the large number of accused charged together, this had to be done to ensure that the Directorate of Legal Aid complies with the constitutional obligation to provide adequate representation to those accused of high treason.

183. The screening process involved extensive individual consultations with all the 120 accused persons, perusing the entire contents of the police docket, and analysing the evidence and State case, the witness statements, and the general defence outline for each accused person, so as to

ensure that no accused persons implicating each other are placed in one group. This was another way the Directorate ensured all the accused received a fair trial, as provided for in article 12 of the Namibian Constitution.

184. Once the legal practitioners were appointed, the accused persons and their appointed legal practitioners proceeded to take instructions in preparation for the trial. Adequate time was afforded to the suspects accused of high treason to prepare for their defence with their respective legal practitioners. The trial is still pending before the High Court, and none of the accused has been convicted yet. They are therefore presumed innocent until the trial is completed and the court makes its decision. All accused are legally represented. The Directorate is responsible for paying the legal fees of all the suspects.

185. In both cases all the accused, like any other accused in Namibia, are entitled to the protection of the fair trial provisions contained in article 12 of the Namibian Constitution. They are thus guaranteed a fair and public hearing by an independent, impartial court within a reasonable time. All the accused are presumed innocent until proven guilty according to the law and after having had the opportunity of calling witnesses and cross-examining those called against them.

186. They were and are afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and are entitled to be defended by a legal practitioner of their choice.

187. They are not compelled to give testimony against themselves and are entitled to prevent evidence being admitted if such evidence has been obtained after torture or undue influence and without being properly informed of their rights.

188. The accused are not being tried, and will not be convicted, for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor will a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

S.V. Mwilima and 121 others

189. The biggest trial in the history of Namibia started in Grootfontein before Judge Hoff early in 2004. The State was represented by Adv. H. January, T. July and C. Barnard. The charges related to crimes committed before, on and after 2 August 1999 when a number of persons intended that Caprivi should secede from Namibia.

190. Thirteen of the accused challenged the court's jurisdiction to try them. After hearing evidence the court released the accused. The State appealed this ruling in the Supreme Court of Namibia. On 21 July 2004 the Supreme Court upheld the appeal and set aside Judge Hoff's ruling in this regard.

191. The trial recommenced on 24 August 2004 with the State calling their first witness on the merits. It continued until 17 March 2005 when it was postponed to 29 March 2005.

192. On 28 March 2005 while on their way to continue the trial a fatal car accident claimed the life of Prosecutor Corelie Barnard while her two colleagues, Deputy Prosecutors-General

Herman January and Taswald July, were admitted to hospital in Windhoek in a critical condition. This necessitated a postponement of the matter as January, July and Barnard had been working on the high treason case since May 2003.

193. On 17 May 2005 the State applied for the trial to be relocated to Windhoek and a postponement until 1 November 2005 to ensure that facilities were properly prepared in Windhoek. This was granted by the court on 26 May 2005.

194. On 1 November 2005 the trial recommenced in a renovated building situated next to Windhoek Prison. At this stage the State was represented by Advs D.F. Small, H. January, T. July and N. Lakay.

195. As was already alluded to, Namibia has the advantage of a democratic Constitution against the background of which all courts measure their proceedings to ensure that the entrenched provisions of a fair trial are complied with at all cost. Presiding officers are independent and decide all cases objectively, against the backdrop of acceptable standards of common law principles of fairness to parties, as those principles are developing in the new democratic dispensation.

196. This is the first criminal case in the history of Namibia where the State is faced with the challenge of prosecuting so many accused (119) on so many charges (278) at once. Three public prosecutors and ten defence lawyers are involved in the case.

197. The accused were all represented from the beginning of the trial and at some stage the Directorate of Legal Aid appointed counsel when it was realized that the accused could not afford their own appointed counsel. This status quo remained as such until the time that the Supreme Court of Namibia dismissed a claim from 13 of the 119 accused regarding the non-jurisdiction of the Namibian High Court to hear their case. Thirty-one of the accused wanted to persist with the claim that the High Court does not have jurisdiction to hear their case. This eventually forced counsel who had represented them up to that time to withdraw as their legal representatives.

198. The 31 accused then claimed that they would no longer participate in the trial, despite advice that the State must ultimately also prove that they owe allegiance to the State. The number of 31 was later on reduced to 30 when one of them had a change of heart and agreed to be represented by one of the 10 counsel for the accused.

199. Counsel for the State urged the court to explain to the accused the consequences of them not participating in the trial but the 30 accused eventually absented themselves from court and stated that they did not wish to participate until after the closing of the State's case. They are still absent without leave of the court. Despite the fact that the State can force them to be present, since they are all in custody, the 30 accused are left in prison.

200. All the accused pleaded not guilty and in respect of those who were undefended, the court has entered pleas of not guilty. In accordance with established common law and their constitutional rights, the accused chose to remain silent and have neither admitted any material fact nor been forced to do so. The State accepted that it will have to prove all material elements to the charges levelled against the accused and has up till now called witnesses in an attempt to prove its case beyond reasonable doubt. Some of the witnesses turned hostile when called upon. None of them were forced to cooperate but left for the law to take its course.

201. The court as a rule does not sit on Fridays, to afford legal representatives proper time for consultation with their clients and preparation of their cases. When it is called for and requested by defence counsels for an adjournment in order to prepare, the State does not object when such request is justified.

202. The State has agreed that witness statements as a rule are disclosed at least three court days before the witness is called. Most of the statements are disclosed more than three days in advance despite the risk that witnesses could be intimidated and were from time to time so intimidated. The court is now strictly enforcing the compliance of the State with this rule and has on several occasions postponed the case when the State could not comply with it on justifiable grounds.

203. The State has once brought an application to sit on Fridays to make up for some lost time. The prosecutors in the trial were involved in an accident causing them to be incapacitated for a considerable time, as a result of which the case could not continue. The court did not grant the application.

204. The State is disadvantaged in this trial in that most of the witnesses are not residing where the court is situated. The prosecutors have thus far ensured that witnesses are subpoenaed in a timely manner, so as not to unnecessarily delay the case from proceeding.

205. The prosecutors are mindful of the need not to let expediency take precedence over the established principle that justice must be seen to be done.

206. The investigators, in conjunction with prosecutors in the case, have closely scrutinized the case right from its inception and it is a well-known fact that suspects against whom there was no evidence have been released. Even after the commencement of the case, charges were withdrawn where the case against the accused was weak or where witnesses have died or could no longer be traced.

207. This is the first case where the Prosecutor-General has assigned three prosecutors at once to prosecute the accused in a criminal trial. This is done in a further attempt to do justice to the case and the accused in all fairness. Two Deputy Prosecutors-General plus a third senior prosecutor are assigned.

208. As the hearing is conducted in open court an objective report regarding fairness can also be obtained from representatives of "Lawyers without borders" who are most of the time present and seated in court during proceedings.

The State v. Progress Kenyoko Munuma and 11 others

209. In this the second treason trial, accused No. 8 was arrested on 18 July 2002 at Kalumba inside Namibia. Accused Nos. 9 and 11 were deported to Namibia by Botswana and arrested on 20 September 2002. On 12 December 2003 Botswana officials deported accused Nos. 1, 2, 3, 4,5,6, and 7 and handed them over to the Namibian authorities at Ngoma. They were arrested on the same date. The Botswana authorities handed accused No. 10 and accused No. 12 to the Namibian authorities at Ngoma on 6 December 2002 and they were arrested on the same date.

210. The accused in this matter appeared in the High Court for the first time on 16 June 2004. From 19 September 2005 eleven of the accused (accused No. 8 excluded) attacked the jurisdiction of the Namibian High Court. On 25 October 2005 the Court dismissed their application.

211. All the accused refused to plead to the charges and pleas of not guilty were entered by the Court on all charges on 6 March 2006. The accused steadfastly refused to take part in the trial. On 15 March 2006 disputes arose between the accused and their defence counsel as the accused refused to give their counsel instructions to challenge any of the evidence being presented by the State. The court requested counsel to remain in case the accused should wish to give them the necessary instructions. On 4 July 2006 counsel were allowed to withdraw after the accused lodged complaints against counsel with the Law Society of Namibia. The accused walked out of the court. On 4 July 2006 they were granted the opportunity to apply for other counsel to assist them. This application was refused by the Directorate of Legal Aid because the accused misused the opportunity as they did not apply to be legally represented in the criminal trial.

212. The accused still refused to take part in the trial and much time was spent on ensuring that the accused received a fair trial. On several occasions they made the continuation of the trial in their presence impossible by singing and shouting slogans. Whenever their rights were explained to them, they refused to take part in the proceedings. On 12 March 2007 the court ruled that they all had a case to answer and refused to discharge them after the State closed its case, as the court found that there is prima facie evidence against all of the accused. The accused refused to give evidence in their defence and again stated that they do not recognize the trial and, as they averred, did not “consider themselves to be part and parcel of the trial”.

213. On 30 May 2007, after a concession made by State counsel to this effect, the Court found that the guilt of accused No. 4 Vincent Liswaniso Siliye and accused No. 5 Vincent Kashu Sinasi was not proved beyond reasonable doubt and acquitted them of all charges. The judgment in respect of accused Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11 and 12 will be delivered on 30 July 2007. The matter has up to now taken more or less 90 court dates.

214. In order to give the Committee a better appreciation of the circumstances which may have led to delays in the trial we enclose hereunder a breakdown of the sequence of proceedings in the trial since its formal commencement. This is in addition to the foregoing analysis.

Table 3**Breakdown of the sequence of proceedings in the trial**

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
High court	18 June 2001	Pretrial; Postponed by defence-application or appeal against ruling of non-disclosure made by	1 August 2001	Defence
	1 August 2001	Postponed by State for	22 August 2001	Agreement
	22 August 2001	Postponed by defence for bail application	4 September 2001	Defence
	4 September 2001	Bail refused. Pretrial proceedings continue	4 February 2002	Agreement
	4 February 2002	Pretrial proceedings continue	23 April 2002	Continuation
	23 April 2002	Pretrial proceedings continue	13 June 2002	Continuation
	13 June 2002	Defence seek compliance with Supreme Court order regarding legal	15 November 2002	Postponed by defence/legal representation
Intervening bail application	27 September 2002	Third bail application i.r.o Geoffrey Mwilima and Bernard Mucheka commenced	30 September 2002	Defence
	30 September 2002	Third bail application i.r.o Geoffrey Mwilima and Bernard Mucheka continued	1 October 2002	Defence
	1 October 2002	Third bail application i.r.o G. Mwilima and B. Mucheka continue	2 October 2002	Defence
	2 October 2002	Third bail application i.r.o Geoffrey Mwilima and Bernard Mucheka continued	20-21 November 2002 Continuation of bail application	Defence
Main trial	15 November 2002	Postponed for trial	25 February 2003	Agreement

Table 3 (continued)

Breakdown of the sequence of proceedings in the trial

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
Third bail application i.r.o Geoffrey Mwilima and Bernard Mucheka continue	20 November 2002	Third bail application i.r.o Geoffrey Mwilima and Bernard Mucheka continue	21 November 2002	Defence
	21 November 2002	Third bail application i.r.o Geoffrey Mwilima and Bernard Mucheka continue	4 December 2002 for submissions	Defence
	5 December 2002	Submissions in relation to the bail application	12 December 2002	Agreement
	12 December 2002	Ruling i.r.o bail application - bail refused		Court
Main trial	25 February 2003	Acc. 4 and 5 sent for psychiatric observation - fit to stand trial	6 May 2003	Defence
Matter placed on roll before scheduled continuations	2 May 2003	To withdraw charges against five accused		Continuation
	20 May 2003	Application for postponement by State to serve pretrial memorandum and further particulars on defence	27 October 2003	State
	27 October 2003	Special plea-jurisdiction 13 acc.	28 October 2003	Defence
	28 October 2003	Continue	29 October 2003	Time
	29 October 2003	Continue	30 October 2003	Time
	30 October 2003	Postponed on request of State/no witness	3 November 2003	State

Table 3 (continued)**Breakdown of the sequence of proceedings in the trial**

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	3 November 2003	Continue	4 November 2003	Time
	4 November 2003	Continue	5 November 2003	Time
	5 November 2003	Continue	6 November 2003	Time
	6 November 2003	Continue/weekend	10 November 2003	Time
	10 November 2003	Continue	11 November 2003	Time
	11 November 2003	Postponed on request of defence/acc. Ill/one passed away	17 November 2003	Defence
	17 November 2003	Recess	19 January 2004	Agreement
	19 January 2004	Continue	20 January 2004	Time
	20 January 2004	Continue	21 January 2004	Time
	21 January 2004	Postponed on request of defence/accused need medical attention WHK	27 January 2004	Defence
	27 January 2004	Continue	28 January 2004	Time
	28 January 2004	Jurisdiction - arguments on procedure for application	9 February 2004	Court
	9 February 2004	Ruling on procedure for jurisdiction application/continue	10 February 2004	Time
	10 February 2004	Continue	11 February 2004	Time
	11 February 2004	Continue and arguments	23 February 2004	Court
	23 February 2004	Ruling	24 February 2004	Time
	24 February 2004	Postponed on request by State/leave to appeal/ruling	1 March 2004	State
	1 March 2004	Continue with leave to appeal	2 March 2004	Time
	2 March 2004	Continue/ruling	4 March 2004	Time
	4 March 2004	Ruling/petition for leave to appeal	8 March 2004	State

Table 3 (continued)

Breakdown of the sequence of proceedings in the trial

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	8 March 2004	Postponed by court/ Mwilima not present to plead on charges	15 March 2004	Defence
	15 March 2004	Absent of two defence counsels	1 June 2004	Defence
	1 June 2004	Waiting of judgment of the Supreme Court	9 August 2004	Court
	9 August 2004	Postponement by defence - thirteen acc. absent	23 August 2004	Defence
	23 August 2004	Continue	24 August 2004	Time
	24 August 2004	Continue	25 August 2004	Time
	25 August 2004	Postponed on request of defence/acc. absent	6 September 2004	Defence
	6 September 2004	Ruling on request of defence	8 September 2004	Defence
	8 September 2004	Continue	9 September 2004	Time
	9 September 2004	Postponed by State - to comply with request for disclosure	13 September 2004	State
	13 September 2004	Continue	14 September 2004	Time
	14 September 2004	Postponed by defence/consult with clients	16 September 2004	Defence
	16 September 2004	Continue/weekend	20 September 2004	Time
	20 September 2004	Continue	21 September 2004	Time
	21 September 2004	Continue	22 September 2004	Time
	22 September 2004	Continue	23 September 2004	Time
	23 September 2004	Postponed by State/witness ill	28 September 2004	Agreement
	28 September 2004	Continue	29 September 2004	Time
	29 September 2004	Continue	30 September 2004	Time

Table 3 (continued)**Breakdown of the sequence of proceedings in the trial**

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	30 September 2004	Postponed by State/witness ill	5 October 2004	Agreement
	5 October 2004	Continue	6 October 2004	Time
	6 October 2004	Continue	7 October 2004	Time
	7 October 2004	Continue	8 October 2004	Time
	8 October 2004	Continue/weekend	12 October 2004	Time
	12 October 2004	Ruling	15 October 2004	Court
	15 October 2004	Continue/weekend	19 October 2004	Time
	19 October 2004	Continue	20 October 2004	Time
	20 October 2004	Postponed by defence/acc. exams	22 October 2004	Defence
	22 October 2004	Postponed by defence/Chanda	26 October 2004	Defence
	26 October 2004	Withdrawal of legal counsel/Chanda	1 December 2004	Defence
	1 December 2004	Postponed legal aid - new counsel	25 January 2005	Defence
	25 January 2005	Postponed to give new counsel opportunity to study record	1 February 2005	Defence
	1 February 2005	Continue	2 February 2005	Time
	2 February 2005	Continue	3 February 2005	Time
	3 February 2005	Continue	4 February 2005	Time
	4 February 2005	Continue/weekend	8 February 2005	Time
	8 February 2005	Continue	9 February 2005	Time
	9 February 2005	Continue	10 February 2005	Time
	10 February 2005	Continue	11 February 2005	Time
	11 February 2005	Continue/weekend	15 February 2005	Time
	15 February 2005	Continue	16 February 2005	Time
	16 February 2005	Continue	17 February 2005	Time
	17 February 2005	Continue	18 February 2005	Time

Table 3 (continued)

Breakdown of the sequence of proceedings in the trial

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	18 February 2005	Continue/weekend	22 February 2005	Time
	22 February 2005	Continue	23 February 2005	Time
	23 February 2005	Continue	24 February 2005	Time
	24 February 2005	Continue	25 February 2005	Time
	25 February 2005	Continue/weekend	1 March 2005	Time
	1 March 2005	Application by State/ruling	3 March 2005	State
	3 March 2005	Postponed by State continuity of evidence	8 March 2005	State
	8 March 2005	Continue	9 March 2005	Time
	9 March 2005	Postponed - Defence Samukange ill	15 March 2005	Defence
	15 March 2005	Continue	16 March 2005	Time
	16 March 2005	Continue	17 March 2005	Time
	17 March 2005	Continue/weekend	29 March 2005	Time
	29 March 2005	Postponed by State, State Prosecutors in car accident	17 May 2005	Agreement
	17 May 2005	Postponed by State to continue in High Court WHK	26 May 2005	Agreement
	26 May 2005	Postponed on request of Defence Samukange excused	1 November 2005	Defence
	1 November 2005	Continue	2 November 2005	Time
	2 November 2005	Continue	3 November 2005	Time
	3 November 2005	Continue	4 November 2005	Time
	4 November 2005	Continue/weekend	7 November 2005	Time
	7 November 2005	Continue	8 November 2005	Time
	8 November 2005	Continue	9 November 2005	Time
	9 November 2005	Continue	10 November 2005	Time

Table 3 (continued)**Breakdown of the sequence of proceedings in the trial**

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	10 November 2005	Continue	11 November 2005	Time
	11 November 2005	Continue/weekend	14 November 2005	Time
	14 November 2005	Continue	15 November 2005	Time
	15 November 2005	Continue	16 November 2005	Time
	16 November 2005	Continue	17 November 2005	Time
	17 November 2005	Continue/weekend	21 November 2005	Time
	21 November 2005	Continue	22 November 2005	Time
	22 November 2005	Continue	23 November 2005	Time
	23 November 2005	Continue	24 November 2005	Time
	24 November 2005	Continue	25 November 2005	Time
	25 November 2005	Continue/weekend	28 November 2005	Time
	28 November 2005	Postponed on request of defence/illness of Lister Tatalife	30 November 2005	Defence
	30 November 2005	Continue	1 December 2005	Time
	1 December 2005	Continue	2 December 2005	Time
	2 December 2005	Continue/weekend	5 December 2005	Time
	5 December 2005	Special entry/ruling	2005	Court
	17 January 2006	Continue	18 January 2006	Time
	18 January 2006	Continue	19 January 2006	Time
	19 January 2006	Continue	20 January 2006	Time
	20 January 2006	Continue/weekend	23 January 2006	Time
	23 January 2006	Continue	24 January 2006	Time
	24 January 2006	Continue	25 January 2006	Time
	25 January 2006	Continue	26 January 2006	Time
	26 January 2006	Continue/weekend	30 January 2006	Time
	30 January 2006	Continue	31 January 2006	Time
	31 January 2006	Continue	1 February 2006	Time
	1 February 2006	Continue	2 February 2006	Time

Table 3 (continued)

Breakdown of the sequence of proceedings in the trial

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	2 February 2006	Continue	3 February 2006	Time
	3 February 2006	Continue/weekend	6 February 2006	Time
	6 February 2006	Continue	7 February 2006	Time
	7 February 2006	Continue	8 February 2006	Time
	8 February 2006	Continue	9 February 2006	Time
	9 February 2006	Continue/weekend	13 February 2006	Time
	13 February 2006	Continue	14 February 2006	Time
	14 February 2006	Continue	15 February 2006	Time
	15 February 2006	Continue	16 February 2006	Time
	16 February 2006	Continue/weekend	20 February 2006	Time
	20 February 2006	Continue	21 February 2006	Time
	21 February 2006	Continue	22 February 2006	Time
	22 February 2006	Postponed section 317 application by defence/ State to respond	27 February 2006	State
	27 February 2006	Continue	28 February 2006	Time
	28 February 2006	Continue	1 March 2006	Time
	1 March 2006	Continue	2 March 2006	Time
	2 March 2006	Continue/weekend	6 March 2006	Time
	6 March 2006	Continue	7 March 2006	Time
	7 March 2006	Continue	8 March 2006	Time
	8 March 2006	Continue	9 March 2006	Time
	9 March 2006	Continue/weekend	13 March 2006	Time
	13 March 2006	Ruling/photo album	15 March 2006	Court
	15 March 2006	Continue	16 March 2006	Time
	16 March 2006	Postponed continuation/ Independence day	22 March 2006	Agreement
	22 March 2006	Continue	23 March 2006	Time
	23 March 2006	Continue/weekend	27 March 2006	Time

Table 3 (continued)**Breakdown of the sequence of proceedings in the trial**

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	27 March 2006	Continue	28 March 2006	Time
	28 March 2006	Continue	29 March 2006	Time
	29 March 2006	Postponed on request by State/obtaining witnesses	3 April 2006	State
	3 April 2006	Continue	4 April 2006	Time
	4 April 2006	Continue	5 April 2006	Time
	5 April 2006	Continue	6 April 2006	Time
	6 April 2006	Continue/weekend	10 April 2006	Time
	10 April 2006	Continue	11 April 2006	Time
	11 April 2006	Recess/obtaining witnesses	16 May 2006	Agreement
	16 May 2006	Continue	17 May 2006	Time
	17 May 2006	Continue	18 May 2006	Time
	18 May 2006	Continue/weekend	22 May 2006	Time
	22 May 2006	Continue	23 May 2006	Time
	23 May 2006	Continue	24 May 2006	Time
	24 May 2006	Postponed defence - want to consult technical person	5 June 2006	Defence
	5 June 2006	Continue	6 June 2006	Time
	6 June 2006	Postponed on request of defence/proper statement from State	12 June 2006	Defence
	12 June 2006	Continue	13 June 2006	Time
	13 June 2006	Postponed on request of defence to consider dispassionately the evidence of Mouton	22 June 2006	Defence
	22 June 2006	Ruling	3 July 2006	Court
	3 July 2006	Continue	4 July 2006	Time
	4 July 2006	Continue	5 July 2006	Time

Table 3 (continued)

Breakdown of the sequence of proceedings in the trial

Appearance	Date of postponement	Proceedings and reason for postponement	Postponed to	Postponement by agreement defence, State judgement, continuation
	5 July 2006	Postponed by State/provide defence with statements	11 July 2006	State
	11 July 2006	Continue	12 July 2006	Time
	12 July 2006	Continue	13 July 2006	Time
	13 July 2006	Ruling/weekend	17 July 2006	Court
	17 July 2006	Continue	18 July 2006	Time
	18 July 2006	Continue	19 July 2006	Time
	19 July 2006	Postponed/Heads/State and Defence	1 August 2006	Agreement
	1 August 2006	Postponed/recess	18 September 2006	Agreement

Table 4

Evaluation of court appearances

Days in court	Pretrial	Appearances for legal aid -Pp effected by accused for legal rep.	Jurisdiction evidence, arguments and judgement	Appeal - arguments and judgement	Evidence on merits
193	5	1	19	1	115

Table 5

Evaluation of postponements

Total postponements	Pp by agreement - State and defence	Pp requested by State	Pp requested by defence	Pp by court for judgements	Continuation of evidence and arguments
64	14	10	30	10	129

215. Administrative justice. Article 18 of the Constitution also subjects decisions of officials to judicial review by guaranteeing all aggrieved persons the right to seek redress in a competent court or Tribunal.

Article 5 (b): Right to security of person and protection by the State against violence or bodily harm

216. Article 8 guarantees respect for human dignity and proscribes the subjugation of anyone to torture. Article 7 provides that no person shall be deprived of personal liberty, except according to procedures established by laws.

217. Namibia is a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although some State authorities have been reported to have committed acts of torture against suspects especially in relation to the Caprivi High Treason trial, the Government has indicated that it does not condone torture. Charges and civil suits are currently pending against those involved. The leading case on torture is *Namundjebo and Others v Commanding Officer, Windhoek Prison and Another* 2000 (6) BCLR671 (NMS).

Article 5 (c): Political rights

218. Namibian citizens regularly participate in elections to elect representatives at local, regional and national levels. Elections are run by the Electoral Commission and are regulated through the Electoral Act 1992 as amended. The Electoral Act provides for procedures to deal with any grievances relating to the electoral process and aggrieved parties have resource to the High and Supreme Court. A number of challenges were dealt with by the courts in the last few years.

219. Since independence in 1990, Namibia conducted national and presidential elections in 1994, 1999 and 2004. It also conducted regional council elections in 1992, 1996 and 2000 and local authority elections during the same period.

220. Through the years there were some legal challenges to the outcome of certain elections where the court was charged to rule on these petitions.

221. The last challenge was in respect of the 2004 National Assembly elections where the COD party, supported by all opposition parties except NUDO, challenged the outcome and demanded a recount of the votes. The High Court ordered a recount which confirmed the results as previously announced.

Article 5 (d): Other civil rights

The right to freedom of movement and residence within the borders of the State

222. Article 21 (h) guarantees citizens the right to freely move throughout Namibia and to settle in any part of Namibia.

Measures for the protection of refugees and asylum-seekers in Namibia

223. During its concluding observations on the last report in 1996, during its interaction with the delegation from Namibia in August 2006, as well as in its outline of issues, the Committee requested information on any measures in place for the protection of refugees and asylum-seekers and their enjoyment of fundamental human rights.

224. The administration of matters relating to refugees and determination of their status resorts to the Ministry of Home Affairs and Immigration. This function is carried out by the Commissioner for Refugees who is appointed in terms of the Namibia Refugee (Recognition and Control) Act No. 2 of 1999.

Refoulement/Physical protection

225. Some 242 persons registered as new arrivals in the course of 2006.

226. The refugee status determination (RSD) process is outlined in the Namibia Refugee (Recognition and Control) act No. 2 of 1999, hereinafter referred to as the Refugee Act. In accordance with section 13, an asylum-seeker “[...] shall, within 30 days from the date on which he or she so entered Namibia, apply in writing to an authorized officer for the granting to him or her of refugee status.”

227. The application is then forwarded to the Namibia Refugee Committee (NRC - see sections 7-11), which “shall, within 30 days from the date of receipt of an application referred to it [...] consider every application [...]” The NRC recommends an application to be approved for refugee status, rejected, or deferred. Subsequently, “the Commissioner shall, on the recommendation of the Committee - (a) either grant refugee Status to the applicant concerned [...]”

228. A rejected asylum-seeker has the right to appeal the decision in the second instance with the Appeal Board. Section 28 stipulates the composition and responsibilities of the Appeal Board including that it “[...] may confirm, vary or set aside the decision to which the appeal relates.” In practice, the Appeal Board was constituted only in late 2006 with the assistance of the United Nations High Commissioner for Refugees (UNHCR).

229. In the adjudication of their case to determine their applications, asylum-seekers have a right to seek the services of legal counsel.

230. UNHCR provides counselling to refugees and asylum-seekers. Some applicants choose also to seek advice from legal NGOs or lawyers. During the Appeal Board hearing, “the appellant shall have the right - (a) to be personally present at the hearing, to be assisted or represented by a legal practitioner or any other person of his or her choice [...]”. Monitoring of the process is being done by UNHCR in accordance with section 7 (2) (f), which stipulates that UNHCR shall be a member of the NRC, holding “[...] observer status with no voting right and act only in an advisory capacity.” In practice, UNHCR plays a similar role in the sittings of the Appeal Board.

231. Overall, the physical safety of the population in question is ensured. The Osire refugee camp includes a police station. Some incidents regarding the physical safety of the population did, however, occur in the camp, which is inhabited by around 6,500 persons. Due to shortage of some food and non-food items, girls are particularly at risk of sexual harassment and exploitation. For instance, the monthly ration of paraffin is usually not sufficient and refugees and asylum-seekers search for firewood outside the camp. In 2006, two cases of rape were reported in Osire.

232. Very few refugees and asylum-seekers have exercised their right to return. In 2006, around 20 persons were repatriated to the Democratic Republic of the Congo, Liberia, Angola and Burundi with the assistance of UNHCR. In addition, UNHCR is aware that some 40 persons have chosen to return spontaneously to Angola.

233. No cases of refoulement are known to the Government and UNHCR. The Government did not return any refugees or asylum-seekers to their country of origin or deport them to third countries. As described above, the appeal process has only just begun to function and Namibia is therefore only likely to be faced with the issue of return of finally rejected asylum-seekers in 2007.

234. Some refugees and asylum-seekers were detained during 2006, mainly because of lack of permits to leave the camp or because their permits had expired. By law, refugees and asylum-seekers are required to reside in a refugee camp in terms of section 20 of the Refugee Act. Namibia made a reservation to article 26 of the 1951 Convention relating to the Status of Refugees (CSR), which provides for freedom of movement of refugees. As a result, permits are issued for a specific period and destination only and persons who are found to have contravened these provisions normally face arrest and detention.

235. During 2006, around forty-eight refugees and asylum-seekers were arrested and detained by the immigration authorities. Most of them were released after UNHCR intervention and understanding by the Ministry of Home Affairs and Immigration. By the end of 2006, some half-dozen refugees and asylum-seekers were still in detention awaiting trial for suspected criminal offences.

236. The Government of Namibia has no record of detention or physical punishment of refugees by traditional, customary, or extralegal authorities including refugees themselves.

237. Although detention of refugees and asylum-seekers is not subject to independent monitoring, UNHCR was informed of the arrest and detention of refugees by immigration and police authorities. While there are no reported cases of refugees challenging their detention before independent tribunals, article 12 of the Namibian Constitution guarantees the right to access to court and this constitutional provision has generally been upheld. The Government also makes provision for legal aid for those accused persons who are not able to afford legal representation during their trials.

238. Article 27 of the 1951 CSR stipulates that “The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.” This article is part of the Schedule to the Refugee Act pursuant to its section 18. Section 16 of the Refugee Act foresees that “every person who has been granted refugee status in terms of section 13 (4) (s) shall, subject to the provisions of this Act - (a) be issued with an identity card in the prescribed form; [...]”.

239. Generally, police and immigration authorities have respected the identity documents issued to refugees.

240. Refugees and asylum-seekers have the right to have access to courts. Article 16 of the 1951 CSR is appended as a schedule to the Refugee Act. The government of Namibia is not aware of any refugee who has been denied this right.

241. Refugees and asylum-seekers in Namibia are not allowed to reside where they choose. When acceding to the 1951 CSR, Namibia made a reservation to article 26 on freedom of movement. With reference to section 19 (reception areas and refugee settlement) and section 20 (requirement to reside in reception area or refugee settlement) of the Refugee Act all refugees and asylum-seekers in Namibia are required to reside in Osire, some 250 km north of Windhoek. In order to leave the camp, they require an exit permit, which is issued by the camp administrator. The period of validity varies but can be for up to two months. Refugees and asylum-seekers are only permitted to reside outside Osire if they have a valid study or work permit.

242. Recognized refugees have had access to United Nations Convention Travel Documents (UNCTDs), in accordance with established criteria. Following their application for a UNCTD with the Ministry of Home Affairs And Immigration, the latter would forward it to UNHCR, which has given out UNCTDs on a case-by-case basis for 16 applicants. Another option open to both recognized refugees and asylum-seekers is to apply for a non-citizen travel document, which was granted in 2006 in at least two cases.

243. Refugees and asylum-seekers receive humanitarian assistance while in Namibia. The monthly distribution of food takes place only in the camp. All refugees and asylum-seekers in possession of a ration card issued by UNHCR (which they normally receive directly upon registration with UNHCR Osire) have access to this assistance. Both UNHCR Osire and UNHCR Windhoek are providing counselling.

244. Refugees have the right to be (self-) employed and to practice their professions. Articles 17, 18 and 19 of the 1951 CSR are appended as a schedule to the Refugee Act, pursuant to its section 18. Both refugees and asylum-seekers have obtained work permits issued by the Ministry of Home Affairs and Immigration and are gainfully employed.

245. Generally, for an alien to be employed, the particular job should have been advertised in the local media. It is often required that the employer provides a sponsorship letter, and UNHCR Namibia also provides a supporting letter for refugees and asylum-seekers. If a refugee or asylum-seeker secures a job, s/he should obtain a work permit before taking it up. In addition, the work permit is limited to a particular employer and is not a general one.

246. The Namibia Labour Act 1992 regulates the relationship between employers and employees. Refugees are not excluded.

247. Refugees who wanted to engage in business, have to submit to the same requirements as nationals, i.e. register the business with the respective Ministry, normally the Ministry of Trade and Industry; they have to obtain a work permit/self-employment permit from the Ministry of Home Affairs and Immigration before they can start to operate their businesses.

248. Article 16 (1) of the Namibian Constitution provides for the acquisition of movable and immovable property by all persons in any part of Namibia. That by implication includes

refugees. Some refugees have been able to acquire movable and immovable property. UNHCR is aware that a very limited number of refugees have obtained vehicles, bank accounts, and homes. However, since almost all acquisition transactions in Namibia require identification documents, most refugees could not obtain bank accounts, houses or vehicles because of a lack of identity documents.

249. Both refugees and asylum-seekers in Osire have access to primary education. Unlike nationals who pay for primary education, which is nevertheless subsidized by the Government, refugees and asylum-seekers in Osire have free access. The school receives assistance from UNHCR, the Government of Namibia, and UNHCR's implementing partner (IP), Jesuit Refugee Service (JRS) in providing payment for staff and educational materials.

250. There is also a junior secondary school and pre-school in the camp. The junior secondary school goes up to grade ten. For grades eleven and twelve students have to find their own sponsorship to continue with their studies outside Osire refugee camp. Last year JRS through a private donor sponsored thirteen (11 male: 2 female) students based on best performance. Eleven of the students completed grade twelve in 2006. One is in grade twelve this year (2007) and another was resettled in a third country of asylum.

251. School uniforms for both girls and boys in the Primary and Junior Secondary School were last year procured for the students by the UNHCR through its IP. It is hoped that the uniforms will help reduce dropout cases.

252. Refugees and asylum-seekers in Osire receive a monthly food ration consisting of maize meal, beans, vegetable oil, salt, and sugar - altogether making up a full food basket of not less than 2,100 kilocalories. They also receive soap, kerosene (now 4 litres per person per month as opposed to 3 litres in 2006). All girls and women of reproductive age receive sanitary materials.

253. Non-food items (NFIs) such as mattress, blankets, stoves, etc. are issued to new arrivals and they are replaced once very old, depending on the availability of funds. Replacement blankets, mattresses and pots were distributed to each household in 2006.

254. Clothes donated by the Moody Church (USA) were distributed to all the refugees in Osire refugee camp.

255. Refugees have access to a health centre and a clinic - both within walking distance in the camp. The clinic is run by the Government while the health centre, funded by UNHCR, is managed by the IP Africa Humanitarian Action (AHA). The health center has a referral system where patients are referred to the District Hospital in Otjiwarongo for further management. In some critical cases UNHCR makes funds available for patients to see private specialist doctors within the country.

256. Like nationals, refugees have access to free voluntary counselling and testing services within the camp and they have access to the antiretroviral therapy (ART) National Programme. The treatment is offered at no cost. Persons receiving antiretroviral (ARV) treatment are also put on a supplementary feeding programme to provide nutritional support. A vegetable garden managed by AHA provides fresh produce for the health centre feeding programme.

257. The Government, through the Office of the Commissioner for Refugees requested the refugee community to identify possible development projects to be funded under the Millennium Challenge Account. A number of project proposals, particularly those focusing on agricultural products and informal businesses, were submitted and are awaiting sponsorship.

258. UNHCR is part of the United Nations Development Assistance Framework (UNDAF) working group to lobby with other United Nations agencies to include refugees and asylum-seekers in their national programmes.

259. As far as it is aware, the Government does not impose restrictions on humanitarian agencies assisting refugees and asylum-seekers with any form of assistance within their mandates.

260. During the period 19 February-March 2007 the Government with the assistance of UNHCR conducted a mass registration of refugees and asylum-seekers who reside in Osire camp and in Windhoek.

261. The exercise revealed a number of categories of persons who needed some form of protection.

262. The report shows that there were some 6,239 refugees, 948 asylum-seekers, 568 persons who were either refugee spouses or relatives holding Namibian citizenship, 65 returnees and 9 cases of concern; 5,992 are of Angolan origin while 1,837 were of other nationalities, notably Democratic Republic of the Congo, Burundi and Rwanda. Some 6,281 reside at Osire refugee camp, while 1,548 reside outside the camp. With regard to the ages of the groups, 1,221 are between 0 and 4 years, 1,613 between 5 and 11, 1,259 between 12 and 17), 3,622 between 18 and 59, and 114 are 60 years and above.

The right to leave and return to one's country

263. Article 21 (i) guarantees the right to leave and return to Namibia. Namibians are free to leave and return to their country, provided they possess the required travel documents. No one is subject to any system of administrative controls on his/her movement from and into the country.

The right to a nationality

264. Article 4 of the Constitution regulates the acquisition and loss of citizenship. The Citizenship Act 1990 further regulates other aspects of citizenship.

The right to marriage and choice of spouse

265. Article 14 recognizes the right of intending spouses to enter into marriage of their own free will and with full consent. There has been a concern in the country about possible abuses by foreigners who marry Namibians for the convenience of getting a foothold to permanently reside in Namibia or acquire citizenship. There seem to be inadequate controls on ascertaining free will and consent.

The right to own property

266. Article 16 (1) of the Constitution recognizes the right of all persons to acquire and own and dispose of all forms of property individually or in association with others.

267. The Constitution guarantees each person the right to own property (movable and immovable) alone or in association with others. No one is prohibited from acquiring or disposing of property.

268. The Government may also regulate or prohibit the right of foreigners to acquire land in Namibia. The Government may also expropriate land or any other property in the public interest provided it pays just compensation.

The land reform process in Namibia

269. Article 23 of the Constitution enjoins the Government to take measures to redress imbalances in the socio-economic development of persons in Namibia who were previously disadvantaged by past discriminatory laws and practices. The system of land ownership and distribution inherited at independence was one of the manifestations of socio-economic inequality among Namibians. The Government therefore needed to introduce measures to change the skewed ownership pattern in land.

270. In this regard, the Government identified reform of the current land distribution system as one area in which it needed to take concrete affirmative steps in order to make land available to Namibians. Policy in this area was informed by the need to redress the unequal and inequitable distribution of land which was inherited at independence, where 44 per cent of the land surface was occupied by less than one per cent of the population, while more than 41 per cent of communal land had to sustain over 50 per cent of black Namibians.

271. However, in the face of this inequality in land ownership stood the constitutionally enshrined right to private property ownership contained in Article 16 of the Constitution.

272. This guarantees the right of an owner of property to hold onto the property and to bequeath the same to his/her heirs. This article circumscribes the limits within which any land acquisitions can be made by Government. The Government identified the redistribution of land in the country as one of the measures it needed to take in order to eliminate social and economic disparities in various spheres of Namibian life. Namibia inherited a system of land ownership characterized by freehold owned land. The bulk of the arable land was owned privately by mainly white commercial farmers.

273. As early as 1991 a National Land Conference was convened to address the need for land reform within the limits set by the Constitution. The Conference was an attempt to get national consensus between those who owned land and those who needed land on how land ownership could be reformed.

274. The Government has in recent years made significant legislative interventions in the land market by determining the circumstances in which it may acquire land for resettlement purposes.

275. Through the Agricultural (Commercial) Land Reform Act 1995 the Government made it obligatory for landowners who wished to alienate land to first make the land available to the State to buy. Where the State finds that land not suitable for its purposes, it can waive its right to have first refusal on the land, in favour of any third person who might wish to buy. In practice, the Government has been known to readily waive its right of first refusal in favour of persons previously disadvantaged to purchase a farm through the Affirmative Action Loan Scheme of the Agricultural Bank of Namibia.

276. The Government has prioritized the acquisition of freehold land for purposes of resettling those who needed land. It has also introduced an Affirmative Action Loan Scheme as a land reform strategy to enable established farmers in the communal area to purchase farms in the commercial area and thus reduce pressure on the communal area.

277. Thus the Government was able to achieve land redistribution through its own acquisition of farms or by assisting communal farmers to purchase their own farms.

278. The Government of Namibia is committed to a land distribution process in Namibia with the aim of reducing income disparities between the previously advantaged white minority and the poor black majority who presently have to eke out a living in congested communal areas.

279. The process of land reform which the Government has embarked on since independence is to purchase white-owned farms in order to resettle black families who are landless.

280. Article 16 (2) of the Constitution provides that “The State or competent body or organ authorized by law may expropriate property in the public interest subject to the payment of just compensation in accordance with requirements and procedures to be determined by Act of Parliament”.

281. Although the Government has the right to expropriate land for resettlement purposes, it has opted for acquiring land on the basis of the land being made available to the State by property owners on their own terms (financial). It is the Government’s view that persons who own land can be encouraged to sell land to the State in order to achieve its objectives of redressing the social deficit in terms of income inequality and skewed land ownership and to achieve a more just society for all its inhabitants.

282. This is what has come to be known as “the willing seller, willing buyer” basis of land acquisition. The pace at which the Government’s land acquisition process has proceeded is therefore determined by the extent to which property owners are prepared to make land available to the Government. The result is that land is not being made available to Government as per the demand of its land reform agenda.

The National Resettlement Programme

283. In terms of the Agricultural (Commercial) Land Act, No 6 of 1995, the State is given certain authority to enact its land programme. The act:

- (a) Lays down a preferential right for the State to purchase commercial farm land;
- (b) Provides for market-related compensation;

- (c) Establishes a Land Reform Advisory Commission, consisting of stakeholders, to advise the Minister of Lands;
- (d) Prescribes the way in which commercial farmland is to be planned and allocated;
- (e) Provides for the subdivision and survey of holdings for small-scale farming;
- (f) Restricts the acquisition of commercial farm land by foreigners;
- (g) Establishes a Land Tribunal to solve possible disputes over prices between sellers and the Government.

Affirmative Action Loan Scheme

284. The Government encourages large communal farmers to purchase commercial land at their own expense as part of land reform. In this regard, the Government often waives its right of first refusal in order to enable the land to be sold to a landless Namibian who is a previously disadvantaged person. Persons from a previously disadvantaged background are enabled to purchase farmland through the Affirmative Action Loan Scheme (AALS).

285. The main objectives of the AALS are to encourage communal farmers with large livestock herds to move to commercial farms in order to make room for small-scale communal farmers, as well as to advance the ownership of freehold farmland by formerly disadvantaged Namibians in order for them to become fully-fledged commercial farmers who produce for the market and contribute to the national output.

286. The programme has been in place since 1992. Initially only full-time farmers qualified, but it was opened to part-time farmers in 1997. In order to qualify for the AALS, an applicant must own at least 150 large stock units or 800 small stock units, or the equivalent in cash. The beneficiary is then given a loan that is repaid over a 25-year period. Different interest rates apply, depending on whether a beneficiary is farming full-time or part-time. Full-time farmers are given a three-year period of grace before interest repayments become due.

287. The AALS has redistributed some 3.47 million hectares thus far, benefiting some 625 beneficiaries. The cost of the scheme to the Government was roughly N\$160.6 million in subsidies from 1992 to October 2004. The trend within the AALS is more and more towards part-time farming. Part-time farmers under the AALS comprise approximately 44 per cent of all AALS beneficiaries.

288. Between 1992 and October 2004, the AALS redistributed on average approximately 267,000 hectares annually. After part-time farmers began to qualify for the scheme in 1997, the annual average increased to approximately 368,500 hectares between 1997-2004. Before that, i.e. 1992-1996, the average was approximately 114,200 hectares per annum.

289. The Government has redistributed some 4.34 million hectares through the resettlement and affirmative action loan scheme, or 12 per cent of freehold land over a 13-15 year period.

Expropriation

290. Section 4 of the Agricultural (Commercial) Land Amendment Act 2003 Act 14 of 2003 empowers the Minister, after consultation with the Land Reform Advisory Commission, to acquire any property compulsorily subject to payment of compensation. This might happen where the Minister and the owner are unable to negotiate the sale of such property by mutual agreement or where the whereabouts of the owner cannot be ascertained after diligent inquiry.

291. In recent years the Government has exercised its right to designate and expropriate certain commercial farms. Upon the Government making its intentions public to expropriate certain farms, it was immediately besieged by complaints that it was acting either unconstitutionally or in a discriminatory fashion. In three cases of farms which have been designated for expropriation, owners or their representatives in Namibia are contesting the expropriations.

292. The Government's intentions have been challenged in court on a number of grounds ranging from unconstitutionality, that the criteria used to designate land for expropriation was discriminatory, that the owners are being targeted for political reasons and that it was contrary to guarantees of equal treatment before the law.

293. In some other cases, the Government has taken possession and ownership but is being challenged on the amount of compensation offered. The Government has engaged lawyers to defend its decision to expropriate the farms but that decision is fiercely resisted by some of the owners.

294. The Government however, continues to identify and designate relevant farms but is learning through some of the court challenges to minimize the opportunities for challenges to its decisions. Where challenges are not mounted to the decision to expropriate, the Government is engaged in discussing the amount of compensation only.

The right to inherit

295. Article 16 (1) recognizes the right to inherit or bequeath property to another i.e. to pass on inheritance.

296. The inheritance of property in Namibia is currently regulated by the Administration of Estates Act 65 of 1966, the Wills Act 1953 and a host of archaic colonial proclamations linked to the racial origin of the individual involved.

297. At independence, Namibia inherited a host of laws which regulated diverse areas of private law according to the racial origin of the person. The law did not specifically impose uniform rules in all areas of personal law. Thus the area of family law and inheritance remained largely governed by native customary law in the case of black Namibians. The South African colonial administration made laws for black Namibians in which they had no say and determined the extent to which their lives were to be governed by the community's own customs and traditions and the aspects which were to be governed by statute.

298. The principal legislation governing the lives of black Namibians is the Native Administration Proclamation No. 15 of 1928 which regulated issues relating to the administration of estates and marriages contracted other than under the statute.

Measures to deal with the persistence of a dual legal system in the area of personal law (status)

299. Since the last report the Government of Namibia has continued its efforts to take measures to remove all remaining discriminatory legislation in various spheres of Namibian life. In this regard, the Law Reform and Development Commission, which is hosted by the Ministry of Justice, identified a number of specific areas of law for research with a view to repealing obnoxious legislation and provisions.

300. The elimination of all remaining discriminatory legislation and practices is one of the tasks which the Law Reform and Development Commission was established to handle and to make appropriate recommendations to the Minister of Justice for remedial action.

301. Although the Commission has worked on a number of projects in this area, some of which have already culminated in the passing of important anti-discriminatory legislation, notably the Married Persons Equality Act, 1996, we wish to comment on the Law Reform and Development Commission's ongoing projects which are designed to deal with the persistence of a dual legal system in the area of personal status.

302. The background to the Law Reform and Development Commission's Succession and Estates project is basically the inherited legal system pertaining to the administration of estates of the deceased in Namibia. This system provided for two parallel systems, in terms of which the estates of white people who died intestate were reported to and administered by the Master of the High Court. The intestate estates of the black people were reported to a magistrate, who in practice did not supervise the estates. This led to serious problems for the surviving spouses and children of black people who died intestate.

303. The Law Reform Development Commission has conducted extensive research into the matter, which is indeed a complicated one. The matter is complex as solutions cannot be found simply by adopting a unified system. Various customs must be considered and preserved in the process. Article 140 of the Constitution empowers competent courts to declare unconstitutional any law which was in force immediately before the date of independence and which was preserved in force by Article 140 (1). The High Court has also pronounced itself on the matter by declaring the existence of the two systems unconstitutional because they are discriminatory, with an order that the law be amended.

304. The ruling by the High Court in the case of Berendt was the culmination of a series of legal challenges which individual litigants mounted to the discriminatory provisions of the Native Administration Proclamation No. 15 of 1928 by approaching the High Court to declare the offending provisions to be unconstitutional. The High Court ruling in the Berendt case gave rise to a series of other challenges involving the administration of intestate estates of black Namibians. Many of these cases were subsequently not opposed by the Government.

305. These cases merely confirmed the extent of the problem of differentiated and discriminatory systems of estates administration for black, white and *baster* Namibians with each community being regulated by its own system. The Government was directed by the High Court to cure the defects in the administration of estates legislation in six months. The Estates and Succession Amendment Act, No. 15 of 2005 was enacted to deal with the matter.

306. This Act brought about the following changes:

(a) Certain provisions of the Native Administration Proclamation of 1928, as well as the entire Administration of Estates (Rehoboth Gebiet) Proclamation of 1941, are repealed. The effect is to do away with provisions based on race or ethnic origin. Furthermore and more importantly, the act provides that all the deceased estates, testate or intestate, will be governed by the Administration of Estates Act, No. 66 of 1965;

(b) A savings provision is made in terms of which the Minister of Justice may assign functions of the Master of the High Court to magistrates.

307. The amendment effected by Act 15 of 2005 did not however address all the issues of concern in the area of estates and succession. Many areas which require reform still remain governed by the pre-existing discriminatory pieces of legislation relevant to estates and succession.

308. The existing law governing inheritance in Namibia has been criticized for continuing to perpetuate Namibia's racial stratification in that separate laws and rules govern the inheritance of different racial groups.

309. The principal concern in inheritance issues is the legal consequences of persons dying without leaving a valid will as an expression of the wishes of the testator or testatrix.

310. It is the case that a majority of Namibians especially among the black community die without writing a will. Thus the main concern is to regulate the distribution of the deceased's property according to rules derived either from statute, common law or customary law.

311. The Legal Assistance Centre has embarked on a vigorous campaign to encourage people to write wills in order to minimize the many problems which arise upon the death of a person who dies without leaving a valid will.

312. The administration of intestate estates of black Namibians is currently governed by the Native Administration Proclamation No. 15 of 1928 which sought to regulate the division of estates through a combination of preserving aspects of the relevant customary law and statutory prescription. The applicable law depends on whether the deceased was married under customary law or under civil law.

313. Where the deceased is married according to customary law only, the rules of the relevant customary community shall apply.

314. However, where the deceased is married under both customary and civil law, the estate shall be governed by the Intestate Succession Act, 1946 as amended, i.e. as if the deceased was white.

315. Where the deceased is white or of mixed race, the applicable law to the division of the inheritance is the Intestate Succession Act, 1946 as amended.

316. Section 17 (6) of the Native Administration Proclamation regulates the status of civil marriages by native black Namibians who reside in the area outside the former police zone i.e. Kavango, Owambo and Caprivi.

317. According to this section, marriages contracted there, shall not bring about community of property as the consequence of marriage, i.e. they shall be out of community unless the parties express their intention to see a matrimonial regime in community of property.

318. However, marriages in all other groups in Namibia under the common law, i.e. statute, automatically result in a matrimonial regime of community of property.

319. The Law Reform and Development Commission (LRDC) has recommended the harmonization of matrimonial property regimes for all common law marriages by recommending that section 17 (6) of the Native Administration Proclamation be repealed. In its report, the LRDC argues that it is necessary to fast-track the repeal of Section 17 (6) in order to get the people to whom this section applies in line with the rest of Namibians; that a matrimonial regime of community of property is fairer to the vulnerable groups in marriage; and that most people have such a regime in mind when they enter into marriage.

320. The estates of all whites, coloureds and *basters*, and all “natives of the south” who marry under common law, whether in community of property (because they do nothing special about their matrimonial property regime when they marry) or out of community of property (as the result of a prenuptial contract), as well as the estates of all “natives of the north” who marry in community of property (because they made the special declaration before a magistrate to that effect) will devolve in terms of the common law of intestate succession (i.e. “the law of the Whites”; the said regulations say in the case of “natives”, “as if they are ‘Europeans’”). This also applies to unmarried whites and coloureds. The *basters* had their own intestate succession law, namely as per Second Schedule of the Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 (Proclamation 36 of 1941) until its repeal by act No. 15 of 2005.

321. The property of all other “natives” shall when they die “be distributed according to native law and custom”. In short this means that the customary law of succession is applicable to all “natives” who are not married under common law as well as to “natives of the north” who are married under common law, but did not ensure, before they got so married, that their marriages are in community of property.

322. The repeal of S.17 (6) should have the result that marriages under common law (often called “civil marriages”) of couples to whom the section applies (i.e. “natives from the north”) will, like all other persons in Namibia, be subject to the default (or automatic or primary) matrimonial system of community of property i.e. if persons want it to be otherwise they must take additional steps, such as making a prenuptial contract.

323. In spite of the LRDC’s ongoing work on reforming the law of inheritance it should be recalled that the High Court decision in the Berendt case in 2003 had the effect of injecting a momentum of urgency into the reform of the law of inheritance in Namibia, especially the removal of the remaining discriminatory aspects.

324. The LRDC's ongoing work on reform of inheritance law culminated in a report which was submitted to the Minister of Justice in 2004. The report proposed retention of a dual system which drew a distinction between customary and non-customary estates. The Minister declined to accept the LRDC's proposals, considering them to perpetuate discriminatory practices.

325. The minister appointed a working committee to draft a bill based on legislation from a neighbouring country. The committee commissioned a consultant who submitted a draft bill to the Cabinet Committee on Legislation (CCL) in the last quarter of 2005.

326. The CCL rejected the draft bill and approved a bill which brought all estates under the administration of the Master of the High Court, irrespective of the race or matrimonial property of any spouses.

327. This bill culminated in the enactment of the Estate and Succession Amendment Act No. 15 of 2005 which gave effect to the High Court decision in the Berendt case.

328. Apart from placing all estates under the administration of the Master of the High Court, the amendment Act did not address the problems of intestate succession, which constitute the bulk of estates, as the majority of deceased persons did not execute wills.

329. The Legal Assistance Centre held a consultative workshop in different centres in Namibia to get inputs on reform of inheritance laws in the wake of the Berendt case. It published the results of the consultations in a report in 2005. The challenge of intestate succession in Namibia is to enact a law that will take account of the customary law practices of the various indigenous communities while ensuring that no discrimination is allowed on grounds of gender or legitimacy or illegitimacy of children. Namibia's various traditional communities prescribe diverse rules as to who is to inherit property. The existing Intestate Succession Act, 1946, as amended, prescribes rules of succession which are not satisfactory to all communities.

330. Namibia needs a system of intestate succession which accommodates the range of indigenous law and blends it with aspects which promote gender emancipation. The challenge is whether there should be a uniform set of rules for all or whether indigenous law should still hold sway. It is clear that not everything can be left to indigenous law whose content and impact would be unknown because it is not codified.

331. The LRDC at its meeting on 27 February 2007 acknowledged that there were problems around the subject of intestate succession and that act No. 15 of 2005 did not resolve all the issues of succession.

332. The LRDC therefore plans to call a meeting of stakeholders to discuss the issues of intestate succession and to approach the Minister with the recommendations of the meeting on the way forward.

Fundamental freedoms

333. The Namibian Constitution enumerates a number of civil rights in Chapter 3 of the Constitution which are specifically entrenched and may only be limited to the extent specified in Article 21 (2).

334. All fundamental freedoms are to be exercised subject to the law of Namibia provided such law imposes reasonable restrictions on the exercise of the protected right.

335. It must also be shown that such restrictions are necessary in a democratic society and that the restrictions are required in the interest of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Freedom of expression

336. The right of freedom of opinion and expression in the Covenant is protected by Article 21 (1) (a), and (b) of the Constitution.

337. The Namibian Supreme Court in the leading case of *Kauesa v Minister of Home Affairs* discussed and determined the extent of any limitations on the exercise of this right. The court held that freedom of opinion and expression was fundamental to ensure the appropriate development of democracy:

“In the context of Namibia freedom of speech is essential to the evolutionary process set up at the time of independence in order to rid the country of apartheid and its attendant consequences. In order to live in and maintain a democratic State the citizens must be free to speak, criticize and praise where praise is due. Muted silence is not an ingredient of democracy, because the exchange of ideas is essential to the development of democracy”.

338. In *Stefanus Mahongo Muheto vs Namibian Broadcasting Corporation*, the High Court held that an application to prevent the NBC from publishing information about the applicant was not defamatory to the applicant and could not be held against the NBC where such publication is shown to be in the public interest. The applicant has a remedy to sue for damages if defamation can be proved.

339. Although the Government has on occasion spoken out strongly against the media’s handling or reporting on certain issues of public interest, it has generally respected the rights of the media to criticize the Government as a watchdog. There have been no moves to gag or stifle freedom of speech and media.

Freedom of conscience

340. Article 21 (1) (b report) and (c) guarantee these freedoms: Namibia allows any person to profess any religion and to manifest such practice. No one has ever been denied a work permit solely because he/she belongs to a particular denomination. As for academic freedom, this is widely enjoyed by academic institutions.

Freedom of assembly and association

341. Article 21 (1) (d) and (e) guarantee freedom of peaceful assembly and association respectively. In view of Namibia’s recent experience of armed resistance to the colonial administration, it was necessary to specifically provide that henceforth any freedom to assemble

and associate must be peaceful and without the use of arms as a means of demonstrating opposition to a certain policy or the actions of Government or any other actor. Thus, it would not be permitted for any political association to exist where its aim is to effect change through the use of armed force. Resistance or disapproval of government policy must be done peacefully.

Article 5 (e)

Economic, social and cultural rights

342. It is beyond the scope of this report to provide a detailed account of the enjoyment of economic, social and cultural rights. Our interest in such rights for the purpose of this report is to emphasize that the Government has guaranteed enjoyment of these rights without any form of discrimination based on race, colour, or national or ethnic origin. Economic, social and cultural rights are the subject of another report which is to be submitted to the relevant treaty oversight committee in due course.

343. Suffice it to stress that the enjoyment of economic, social and cultural rights have been guaranteed by the Namibian Constitution in terms of a number of its relevant articles notably, article 95 (principles of State policy), article 8 (respect for human dignity), article 10 (equality and freedom from discrimination), article 19 (protection of the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion etc. Legislative measures such as the Racial Discrimination Prohibition Acts 1991 and 1998, as well as the Labour Act 1992, give effect to the constitutional imperative of outlawing racial discrimination in all spheres of national life.

344. Article 95 (b) commits the Namibian State to promoting the welfare of the people, by adopting policies aimed at:

“... ”

(b) Enactment of legislation to ensure that the health and strength of the workers men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;

(c) Active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices;

(d) Membership of the ILO, and where possible, adherence to and action in accordance with the international Conventions and Recommendations of the ILO.”

345. In this regard, the Labour Act 1992 and 2004 as well as the Labour Bill 2007 regulates the entire labour force market to guarantee employees free choice of employment, just and favourable conditions of work, equal pay for equal work and just and favourable remuneration.

346. A number of cases have been litigated through the district and labour courts which established important precedents for the regulation of the labour market. It is beyond the scope

of this report to discuss many of these cases. Suffice it to say that notable decisions have been made over the years which have spurred the progressive development of labour relations in the country.

347. Article 95 (c) of the Constitution commits the State to promote/encourage the formation of independent trade unions to protect workers' rights and interests and to promote sound labour relations and fair employment practices.

348. The right to form trade unions is also guaranteed as a non-derogable fundamental freedom in Article 21 (e) of the Constitution. The Labour Act 1992 regulates the procedure for the registration and recognition of trade unions.

349. Since independence some 47 trade unions have been registered with the Labour Commissioner.

350. Namibia is party to ILO Conventions No. 87 of 1984 on Freedom of Association and Protection of the Right to Organize and No. 98 of 1949 on the Right to Organize and Collective Bargaining. Namibia is not a party to ILO Convention No. 151 of 1978 on Labour Relations.

351. Reports under the Conventions of which Namibia is a party have been submitted to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in accordance with Articles 19 and 23 of the ILO Constitution.

The right to housing

352. This right is derived from the right to an adequate standard of living as contained in the Covenant on Economic Social and Cultural Rights. In July 1991 the Government of the Republic of Namibia adopted the National Housing Policy in which it recognized the right to shelter and a place to live as a fundamental right. This policy guided the formulation of the National Shelter Strategy and implementation of the National Housing Programme. The objectives of the Government's policy are to create the necessary conditions for every Namibian irrespective of race, colour, creed or social status to achieve housing provision according to their needs, priorities and affordability.

353. The Government places the primary responsibility for providing housing on the head of the household and only provides support for the householder to house his/her family. Government's view is that the process of housing should be people-centred and fully participatory.

354. The National Housing Policy is under review to determine its relevance to the needs of the sector.

355. A National Habitat Committee was set up and is assisted by Regional Habitat Committees in the 13 regions which consider human settlement development issues and oversee the implementation of the Decentralized Build Together Programme (DBTP).

356. The DBTP oversees the implementation of four sub-programmes:

- Urban/rural sub programme;

- Social housing sub-programme;
- Single quarters transformation;
- Informal settlements upgrading.

Urban/rural housing sub-programme

357. The objectives of this sub-programme are to:

- (a) Facilitate housing loans to low-income families;
- (b) Assist low and middle-income families who are living in unproclaimed areas and who do not have access to credit from banks, building societies and housing delivered by the National Housing Enterprise (NHE);
- (c) Facilitate housing loans to low-income family groups living in disadvantaged circumstances.

Social housing sub-programme

358. The purpose of this sub-programme is to provide loans to small local authorities and regional councils to facilitate housing provision for welfare cases such as disabled, pensioners and destitute persons on an economically sustainable basis through a cross-subsidization system.

359. This programme is executed by local authorities and regional councils on a cost recovery basis. Some houses are rented out by social welfare cases at 5 per cent interest, while other houses are built and rented out at market rates to subsidize the sub-programme.

Single quarters transformation sub-programme

360. The objective of this sub-programme is to transform single quarters into family units by demolishing old buildings and erecting new houses for the affected residents. The programme is implemented on a cost recovery basis. The terms and conditions of the urban/rural housing sub-programme are applied. Those who cannot be accommodated in the newly constructed housing units have to be resettled in other residential areas.

Informal settlement upgrading sub-programme

361. The aim of this programme is to assist small local authorities and regional councils in the provision of basic services such as water, roads, sewerage and electrical distribution network in informal settlement areas.

The right to public health

362. The provision of health services in Namibia is shared among three main providers, with the Government accounting for 70 -75 per cent, missions 15 -20 per cent and the private sector 5 per cent. The mission health service providers are non-profit and are mostly operating in rural areas; these are Lutheran, Roman Catholic and Anglican missions. These missions

are 100 per cent subsidized by the Ministry of Health and Social Services. The private sector, which is profit-oriented, is mainly urban-based, providing health care from eleven medium-sized private hospitals and from private pharmacies, doctors' surgeries and nursing homes.

363. At the community level, the Government works with NGOs, community-based organizations and local councils to promote community action spearheaded by a wide range of community health workers (community health volunteers, traditional birth attendants, and community own resource persons). A mobile outreach programme supports the initiative, backed by clinics and health centres.

364. The Ministry of Health and Social Services (MOHSS) has since adopted a decentralization strategy to improve service provision and management by dispersing authority to 13 MOHSS regional management teams. A total of 34 health districts have been created to coordinate community health services, clinics, health centres, and district hospitals. The four regional health directorates support the 34 health districts.

365. In an effort to further support the districts, a total of three intermediate/referral hospitals are planned for Oshakati, Rundu and Katutura, while the Windhoek Central Hospital performs the role of overall national referral hospital. The referral hierarchy is based on the principle of a cost-effective referral chain so that health-care provision is based on specific need rather than on factors such as historical forces or skewed incentives.

366. The key health challenges that the country faces include an HIV/AIDS epidemic, tuberculosis, malaria, emerging non-communicable diseases, maternal and child health and environmental health.

367. The health sector is guided by the Ministry's Overall Health Policy Framework, which was revised in 1998. The policy is based on the tenets of primary health care approach, which include equity, intersectoral collaboration and community participation.

Article 6

368. Articles 79 and 80 of the Constitution confer on the Supreme Court and High Court of Namibia jurisdiction to hear and adjudicate cases which involve the interpretation of the Constitution, implementation and upholding of the Constitution, and the fundamental rights and freedom guaranteed thereunder.

369. Apart from the courts, the Constitution also empowers the Ombudsman "... to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms ..." and "... to investigate complaints concerning practices and actions by persons enterprises and other private institutions where such complaints allege violations of fundamental rights and freedoms under this Constitution have taken place".

370. In addition to investigating, the Ombudsman has a duty to provide complainants with remedies as set out in Article 91 (e) aa)-ff) thus:

“The functions of the Ombudsman shall be defined and prescribed by an Act of Parliament and shall include the following:

(e) The duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding paragraphs through such means as are fair, proper and effective, including:

(aa) Negotiation and compromise between the parties concerned;

(bb) Causing the complaint and his or her finding thereon to be reported to the superior of an offending person:

(cc) Referring the matter to the Prosecutor-General;

(dd) Bringing proceedings in a competent Court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures;

(ee) Bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra vires;

(ff) Reviewing such laws as were in operation before the date of independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon.”

Article 7

371. The Government of Namibia has sponsored a number of human rights education programmes for various government entities and set up a civil education project to promote human rights education in the school system.

372. Enforcement entities such as the Defence Force, Police and Prisons Service have been provided with human rights education on the key international human rights instruments as part of their training programmes.

373. In 2006 the Human Rights Documentation Centre at the University of Namibia (UNAM) hosted a workshop for magistrates on human rights education in the criminal justice system.

374. Non-governmental organizations have also actively promoted the dissemination of international human rights instruments to the general public and some have instituted cases in the High Court where violations of human rights were alleged to have taken place.

375. Various donors have also contributed to the human rights education programmes of diverse human rights advocacy groups.

376. In October 2006, the Southern African Human Rights Trust (SAHRIT) provided training on human rights report writing to members of the Government's Inter-Ministerial Committee on Human rights and Humanitarian Law.

Measures to foster a culture that effectively protects human rights

377. The Office of the Ombudsman has decided to focus its activities during 2007 on running human rights awareness raising programmes throughout the country and to vigorously investigate human rights violations.

378. In pursuit of cooperation with other national human rights institutions (NHRIs), the Ombudsman on 15 February 2006 applied for accreditation to the International Coordinating Committee of national human rights institutions for the promoting and protection of human rights (ICC). The ICC is a representative body of the NHRI establishment for the purpose of creating and strengthening NHRIs which conform with the Paris Principles, which are the basic requisites NHRIs must have to ensure the fulfilment of their mandates in an independent and effective manner.

379. Furthermore, having realized that:

(a) It is fundamentally important to communicate to the public in simple terms what human rights are and where to complain should these rights be violated;

(b) While work in the formal education sector is an important long-term investment, media campaigns, posters, brochures and other public awareness tools may have a more immediate effect;

(c) The Office will benefit from collaborating with civil society organizations who are “closer to the ground” and a source of knowledge and expertise, especially in the field of education and training activities and public awareness campaigns;

(d) Civil society organizations may greatly assist in channelling or directing complaints to the Office from the most remote areas;

the ombudsman on 6 April 2006, in collaboration with NGOs, civil society organizations and the Council of Churches, established the Ombudsman Human Rights Advisory Committee. The purpose of this initiative is to create a forum for exchange of dialogue regarding all areas of human rights which could make a difference in the lives of Namibian citizens.

380. The Committee consists of 20 members from NGOs, civil society organizations, government ministries and the Council of Churches and meets monthly under the chairmanship of the Ombudsman. The Committee organized the 16 Days of Activism against Gender Violence campaign from 25 November until 10 December 2006.

381. The Human Rights and Documentation Centre of the University has been requested to disseminate the various human rights instruments to which Namibia is a party, through publication of these on its website.

382. The relevant government authorities responsible for the enforcement of the Convention’s provisions have been provided with copies of the human rights instruments to which Namibia is a party, have been sensitized as to their reporting obligations and have been provided with a copy of the last periodic report for their action.

383. Ministries affected by the implementation of the Convention are represented on an inter-ministerial committee on human rights and humanitarian law. The Inter-Ministerial Committee is charged with the responsibility of compiling the Government's State reports under the various human rights instruments.

384. Membership of the Inter-Ministerial Committee is drawn from officials of the following Ministries/agencies /offices of Government:

- Ministry of Justice;
- Ministry of Foreign Affairs;
- Ministry of Defence;
- Ministry of Gender Equality and Child Welfare;
- Ministry of Health and Social Services;
- Ministry of Safety and Security;
- Ministry of Education;
- Ministry of Labour and Social Welfare;
- Ministry of Home Affairs and Immigration;
- National Planning Commission;
- Human Rights and Documentation Centre;
- The Ombudsman.

III. CONCLUSIONS

385. Namibia acceded to the Convention in 1994 a few years after her independence in 1990, as a further confirmation of the country's commitment to combat the vestiges of racial discrimination and apartheid as enjoined by article 23 of the Constitution.

386. Because of Namibia's constitutional commitment to eradicate racial discrimination there appears to have been no direct and concerted effort to align with the specific provisions of the Convention to ensure that the Convention was fully implemented in all its aspects in a way that clearly demonstrates, by reference to the Convention's provisions, that it is being implemented.

387. The Racial Discrimination Prohibition Act 1991 was promulgated prior to Namibia's accession to the Convention. It was principally designed to give effect to the criminalization of apartheid and racial discrimination which article 23 of the Constitution called for.

388. In view of Namibia's monist approach to the reception of rules of public international law and international agreements, it is essential that domestic law is harmonized with the international agreements which are to be received, before the actual accession or ratification of the instrument. Except for provisions which are not self-executing, the treaty takes direct effect as if it were an ordinary domestic piece of legislation. In this regard, article 144 of the Constitution provides: "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."

389. Namibia also faced the challenge of having to promote equality before the law and non-discrimination as enshrined in Article 10 of the Constitution, while at the same time she had to take certain measures to redress the effects of past discriminatory practices and policies by taking steps to advance certain previously discriminated persons. The extent to which the appropriate balance was struck by the Government in its policies and legislative measures was the main subject of constitutional litigation in Namibia's formative years, especially the first 10 years.

390. Namibia has broadly implemented the Convention through the enactment, prior to accession to the Convention, of the Racial Discrimination Prohibition Act 1991. The act has been judicially tested through a series of court decisions over the last few years, principally for its compatibility with the Constitution. It was found wanting in some respects and an amendment was consequently passed in 1998.

391. The challenge of Namibia's monist approach to the reception of international agreements is to align existing domestic law with the Convention's specific provisions and to see the courts directly applying the provisions of the Convention to resolve disputes of alleged racial discrimination as part and parcel of the country's arsenal of laws to combat racial discrimination effectively.

392. Where provisions are not self-executing, steps have to be taken to give effect to such provisions by enacting the requisite enabling instruments or amending existing instruments to make it possible to give effect to the provisions of the treaty.

393. A number of complaints on racial discrimination were received by the Office of the Ombudsman and were adjudicated according to the powers and procedures of that Office.

394. There were also a number of criminal dockets opened with the Office of the Prosecutor-General. These were decided upon and few have led to prosecutions, while the majority were found not to amount to racial discrimination.

395. Although it is not possible to say that incidents of racial discrimination have been eradicated in Namibia, it is fair to say that the Government's concerted efforts to promote national reconciliation since independence have had a beneficial and positive effect on race relations in the country.

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