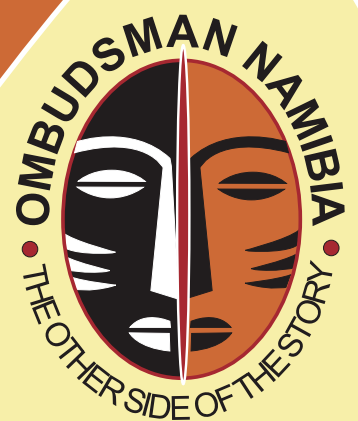
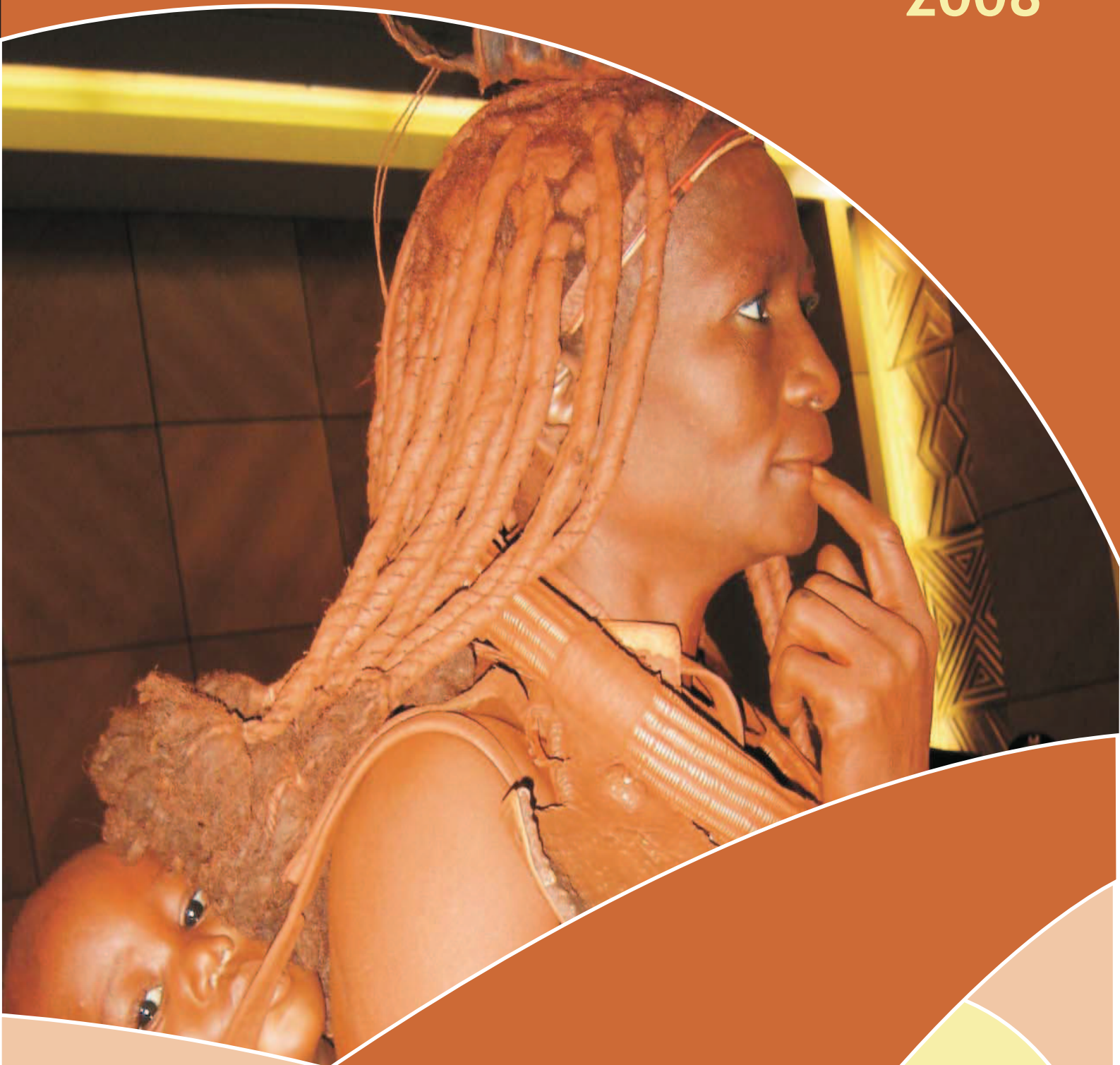


Annual Report 2008



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- 
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MISSION STATEMENT

THE OFFICE OF THE OMBUDSMAN OF NAMIBIA
STRIVES TO PROMOTE AND PROTECT HUMAN
RIGHTS, FAIR AND EFFECTIVE ADMINISTRATION,
COMBAT CORRUPT PRACTICES AND PROTECT
THE ENVIRONMENT AND NATURAL RESOURCES
OF NAMIBIA THROUGH THE INDEPENDENT AND
IMPARTIAL INVESTIGATION AND RESOLUTION
OF COMPLAINTS AND THROUGH RAISING
PUBLIC AWARENESS



MESSAGE FROM THE OMBUDSMAN

This annual report is a review of our service and its impact over the past year and of our main outreach and public education activities. It is an opportunity not only to look back, but also to signal some of the opportunities and challenges that the Office of the Ombudsman will face in the years to come.

While there is always room for improvement, I believe that as an Office we have made enormous advances in creating a modern complaint handling institution and I am grateful to my predecessors, former and current staff who have worked so hard to build a professional and responsive institution dedicated to assisting those who are in need of our service.

Our complainants are at the heart of what we do. We always aim to be independent, impartial, fair and expert in responding to complaints and to be accessible to all those who seek our assistance. While we strive to handle all complaints to the best of our ability, we have also realised that there is a lot to be learned when dealing with complaints and all of these elements form an integral part of quality public service delivery. It remains a challenge for this Office to encourage service providers to foster a responsive and learning culture that recognizes the benefits of complaints. Such an approach will definitely enhance confidence and satisfaction in public bodies and the service they deliver.

We strive to be a learning Office and therefore we must actively seek feedback from our complainants; our commitment to take their views and comments on board will ultimately improve our service delivery.

In dealing with outreach and partnership work, we must work towards the following goals:

- To support and guide public bodies to improve their internal complaint handling practices;
- to raise awareness about our role as well as our powers, duties and functions; and
- to make sure that our work complements that of other offices.

In 1974, the International Bar Association defined the Ombudsman as -



“an office provided for by the Constitution or by action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or the parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion and who has the power to investigate, recommend corrective action and issue reports”

The powers, duties and functions of the Ombudsman are defined in the Ombudsman Act, No 7 of 1990 and there has been little change over the years in the manner in which we have exercised our powers and carried out our duties and functions. The approach over the years had been to investigate and resolve mostly maladministration complaints, due to a lack of capacity to deal properly with complaints relating to human rights and the environment; serious corruption complaints were mostly sourced out for investigation, but are now referred to the Anti-Corruption Commission. However, this approach is outdated and not in line with the worldwide practice in Ombudsman Offices to engage in large-scale public education efforts in order to become proactive rather than reactive. This is the case with Ombudsman Offices dealing with only one or two of the mandates of our Office, which mostly excludes human rights; that is normally dealt with separately by sub-

stantive human rights commissions. Our Office is also unique because it is the only Ombudsman Office with the additional mandate of protecting the environment.

The challenge for our Office in regard to its human rights and environmental mandate, is to position itself in such a way that we create an organisation which is cohesive and responsive to the expectations of the citizens as well as the international human rights community and to ensure that government will always be in a position to present proper state reports to the UN Treaty Bodies on the status of observance of international standards of human rights and freedoms in Namibia.

However, the successful promotion of human rights observance requires political will, broad participation and significant financial and human resources.

To meet the challenges envisaged by a new proactive approach and the establishment of our Office as the National Human Rights Institution, it will be necessary to make changes in the Office, most notably an organisational restructuring (reported on in more detail elsewhere in the report).

In line with previous years, there are separate sections in this

Report devoted to each of the mandates, detailing the number of people we have helped and providing statistics about our core business.

Although there is a lot of room for improvement, I am confident that the staff will continue their commitment to deliver a first class complaint handling service and for that I wish to thank them.

We do not work in isolation, many other organisations, ministries, institutions and also our donors have played an important part in assisting us to deliver on our strategic objectives and I wish to commend and thank them for that, especially the French Embassy, the Raoul Wallenberg Institute, the Konrad Adenauer Foundation, the United States Embassy and the Danish Institute for Human Rights. We trust that we can count on their continued support to ensure that the Office of the Ombudsman goes from strength to strength.

I also want to use this opportunity to welcome Ms Eileen Rakow on board, who joined the Office on 1 September 2008 as Director: Investigations. I am confident that the investigation of complaints will reach new heights under her leadership.

Lastly, I wish to express my gratitude to everybody whose efforts contributed to the appearance of this Report.

S COPE OF ACTIVITIES

Overview

The major activity of the Ombudsman remains the receiving and investigating of complaints and to act as an intermediary between citizens and government institutions. In doing so, and if he is to be successful, it is important for him to help build up a trust relationship and to satisfy the demands of both sides rather than to work exclusively for one or the other.

Complaints

We received 1565 complaints during 2008, 94 more than the previous year. Although we only found in favour of complainants in a limited number of cases, it is our general experience that we have to contend with deeply unhappy complainants convinced that they were treated unjustly, while the truth is that an administration may have acted properly, but failed to communicate the correct state of affairs to the complainant. Such a situation undermines the citizen's trust in the state and its administration. As an objective and independent public advocate, the Ombudsman must make the complainant understand that the administration could not act differently under the existing law. Delays in administration, shortcomings with regard to advice, guidance and information, failure to give reasons, neglecting to reply to queries, etc, are all part of the everyday reality of the lives of citizens and the Ombudsman.

Participation in events/activities

3-7 March 2008 : Berlin, Brussels: Attended the Conference: European Union and Africa: Emerging Priorities, Opportunities and Challenges

8 April 2008 : Tripoli, Libya: Attended the Second General Assembly of the African Ombudsman and Mediators Association

14-18 April 2008 : Geneva, Switzerland: Attended the Annual General Meeting of the International Coordinating Committee of National Human Rights Institution for the Promotion and Protection of Human Rights (ICC)

28 April 2008 : Windhoek: Delivered a presentation on The Activities of the Ombudsman and Concerns in the Regional context at the First Regional Meeting of the ACP-EP Joint Parliamentary Assembly : Southern Africa

10 May 2008 : Windhoek: Participation in the Panel Discussion of the Role of Human Rights Organisations in the Region on the TV Programme: Talk of the Nation

16-21 June 2008 : Windhoek: Deliver a presentation: The Ombudsman's Role in the Electoral Process at a workshop held by The Forum for the Future

23 June 2008 : Windhoek: Attended the celebration of Africa Public Service Day

8 July 2008 : Windhoek: Attended the Stakeholders Information and Awareness Workshop on the Environment Management Act, (Act No 7 of 2007)

4 August 2008 : Windhoek: Attended a half day Workshop on Human Trafficking in Namibia

18-21 August 2008 : Windhoek: Participated in a Workshop on Administrative Justice in Namibia

3-5 September 2008 : Swakopmund : Attended and Participated in the Law Reform and Development Commission's Retreat

21-24 October 2008 : Nairobi, Kenya: Attended the 9th International Conference of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights. Theme: Role of National Human Rights Institutions in the Administration of Justice

10-13 November 2008 : Livingstone, Zambia: Attended a Sub-Regional Training Course on National Inquiries

1-2 December 2008 : Egypt: Attended the Third International Conference of Cairo. Theme: The Universal Declaration of Human Rights: 60 years after: Between Rhetoric and Reality

3-8 December 2008 : Poland: Attended the celebration of the 60th Anniversary of the Universal Declaration of Human Rights by The Office of the Commissioner for Civil Rights Protection

10 December 2008 : Windhoek: Participated in the Panel Discussion in celebration of International Human Rights Day on TV Programme : Talk of the Nation

Visitors to the Office

12 March 2008 : US Ambassador to Namibia, Mrs Gail Mathieu

3 April 2008 : Spanish Ambassador to Namibia, Mr Alfonso Barnuevo

21 April 2008 : British High Commissioner to Namibia, Mr Mark Bensburg

Regional Visits

21-30 May 2008 : Oshakati Regional Office Visit

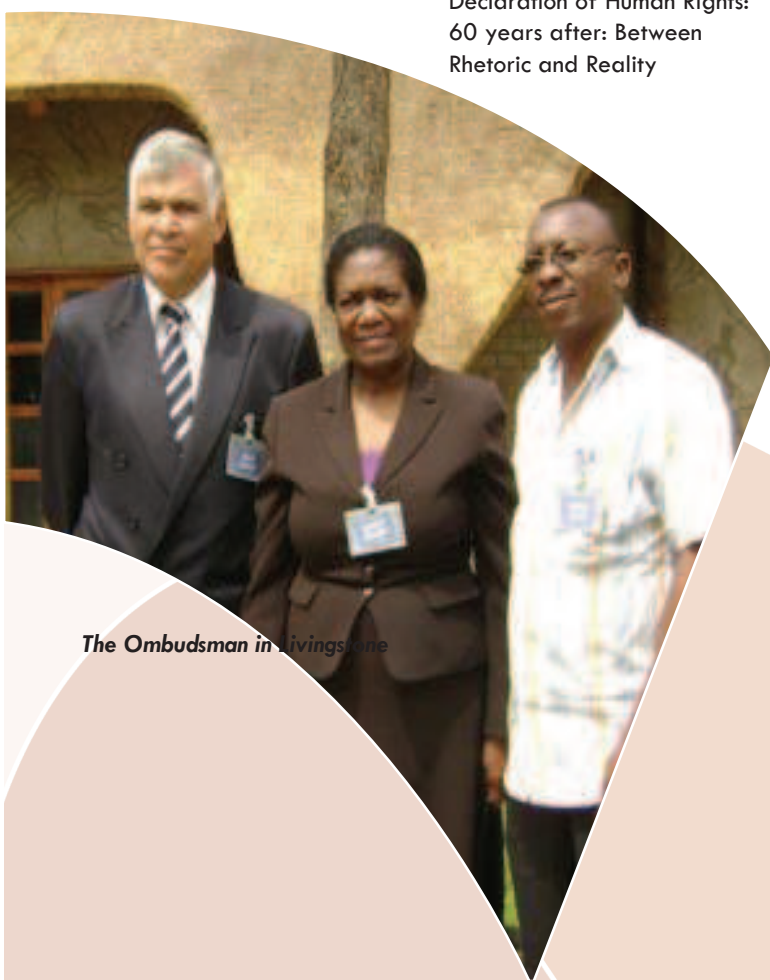
5-6 August 2008 : Keetmanshoop: Public Hearing on Racial Discrimination

12 August 2008 : Swakopmund: Public Hearing on Racial Discrimination

13 August 2008 : Walvis Bay: Public Hearing on Racial Discrimination

15-16 August 2008 : Oshakati: Public Hearing on Racial Discrimination

18-19 Nov 2008 : Lüderitz: Human Rights Training for Prison Officials and Inspection of Prison



The Ombudsman in Livingstone

- 20-21 Nov 2008** : Keetmanshoop:
Human Rights Training
for Prison Officials and
Inspection of Prison
- 24-27 Nov 2008** : Hardap:
Human Rights Training for Prison
Officials and Inspection of Prison

International Membership

The Office of the Ombudsman is a member of the following international organisations whose conferences and meetings are attended regularly:

- The International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC)
- The Commonwealth Forum of Human Rights Institutions
- The Network of Africa Human Rights Institutions
- The International Ombudsman Institute (IOI)
- The Africa Ombudsman and Mediators Association (AOMA)

Forthcoming Activities

- Celebration of Constitution Day on 9 February 2009
- Public Lectures in the regions
- Hosting of National Human Rights Conference
- Continuation of Human Rights Training for Prison Officers and Inspection of Prisons
- Attending the International Ombudsman Institute's Conference
- Newspaper insert about forthcoming elections
- Review of service charter
- Community training: domestic violence

Challenges

Proper administration and good governance cut across all public service delivery and as such have a direct bearing on fundamental human rights; the promotion of proper admin-

istration is central to the task of the Ombudsman and the relevance of good administration as it relates to human rights will continue to expand the Ombudsman's role as guardian of human rights.

For the past two decades we believed that our way of doing things met the standards required by the Constitution and our Act; however, the winds of change are blowing ever stronger in the international community and the goal posts have moved. To adapt to the changing world, to align our business to the new proactive approach and to cement our Office as the National Human Rights Institution we need to make changes, more notably an organisational restructuring which would meet the demands placed on the Office. The capacity of the Office (financial and human resources) must be strengthened if we are to effectively fulfill our mandatory obligations; if one considers the following activities associated with the human rights mandate, it is clear that the current organisational structure within the Ministry of Justice (see pg 24) does not suffice to meet the challenges faced by the Office:

- Conduct investigations into complaints alleging violation of human rights and freedoms and provide redress
- Identify complaints for high impact litigation and systemic redress, where needed
- Co-ordinate educational programs for judicial officers, politicians, law enforcement officers, custodial officers and other interested groups on human and constitutional rights
- Undertake surveys to ascertain the extent to which the people of Namibia are aware of their human and constitutional rights, have full enjoyment of those rights and have access to redress mechanisms
- Conduct enquiries into human rights issues of major importance to the people of Namibia and into practices that may violate fundamental rights and freedoms
- Promote a culture of tolerance, inclusiveness and dialogue on fundamental human rights and freedoms through public presentations, seminars, workshops and round table conferences
- Undertake research on issues pertaining to fundamental human rights and freedoms
- Review existing legislation for inconsistencies with the letter and spirit of the Constitution and make recommendations for change

- Propose laws or suggest action government may take in relation to human and constitutional rights
- Examine international instruments relevant to human rights and advise government on the consistency of the laws of Namibia with these instruments
- Assist public and private sector organisations to develop their own capacity to promote a human rights culture and to prevent violations of fundamental human rights and freedoms
- Collaborate and build partnerships with other stakeholders to improve communication, networking and information sharing on human rights
- Conduct intensive public education campaigns throughout Namibia on a continuous basis
- Regularly attend obligatory and non-obligatory human rights meetings, conferences, workshops and seminars in Africa and further afield for purposes of reporting, training and networking.
- Facilitate the compilation and monitoring of a human rights action plan which would assist government to fulfill their obligations in terms of international human rights instruments

M AJOR ACTIVITIES

General Overview

During the past 19 years we dealt with thousands of complaints and our effectiveness depends on the speed and informality with which we can finalise a complaint and on convincing government that our recommendations are based on sound principles and should be followed.

In my opinion we have slaved for far too long in obscurity and below the public radar, concentrating exclusively on the resolution of individual complaints in a rather invisible fashion. Limiting ourselves to the “traditional” complaint resolution model of Ombudsmanship not only threatens our relevance but also prejudices our complainants. It limits our effectiveness in resolving complaints and prevents us from being agents of change. As persuasive as the Ombudsman may be, if officials ignore enquiries from the Ombudsman no further discussions will advance the resolution of the complaint.

Because we work in obscurity, away from the public eye, there is no pressure from outside on the official who decides not to assist the Ombudsman, because he does not have to. The non-responsiveness on the part of officials and the urgent need for a better and more effective service delivery to our complainants, necessitates change in our Office; we want to move away from a mere complaints department to an architect of better governance and we should thus urgently get rid of our culture of courteous regard and adopt a culture of demand for a better, speedy and more responsive public administration. If we want to make a difference, we must be seen to be producing results; if we constantly work in the background and not producing results, not demonstrating value to the public, we may become invisible. “An invisible Ombudsman is and ineffective Ombudsman. An ineffective Ombudsman may soon become an unemployed Ombudsman” (André Marin, Ombudsman Ontario)

The following cases amplify the aforementioned:

- The Office received a complaint against a certain Ministry on 29 August 2008. We requested the accounting officer in writing to provide us with an explanation. It appears

that he sent our letter to the third party involved and the third party's response was then sent to us. We were not satisfied with the response and on 12 September 2008 we requested the accounting officer to fully investigate the matter and inform us of the outcome. Three months later we still have not received a response from the accounting officer.

- The Ministry of Home Affairs and Immigration requires a person permanently resident in the country to apply every second year for an entry visa and pay for such visa. A complainant questioned the legality of the action and we requested the Ministry for an explanation and the legal basis on which they require payment for such visa. Four months after the Ministry informed us that they requested a legal opinion from the Attorney-General, we did not receive feedback despite a written reminder; meanwhile the complainant accused us of ineffectiveness. The matter continues.

Complaints

Duties and powers of the Ombudsman:

If a complaint is received from an aggrieved person, it will be investigated. To execute and perform his duties, the Ombudsman has the power to:

- a) issue subpoenas requiring the attendance of any person before the Ombudsman and the production of any document or record relevant to any investigation by the Ombudsman;
- b) cause any person contemptuous of any such subpoena to be prosecuted before a competent Court;
- c) question any person;
- d) require any person to co-operate with the Ombudsman and to disclose truthfully and frankly any information relevant to the investigation.

The Ombudsman or staff authorised in writing may also -

- a) enter any building or premises, or any part thereof, excluding any building or premises used as a private home, and to make enquiries therein or thereon;

- b) have access to documents, books and other documents and to make copies thereof or extracts there from excluding access to, copies of or extracts from the private documents or goods from any person;
- c) right to seize anything.

The Ombudsman may take the following actions or steps following an investigation:

- a) notify the complainant of the outcome of the inquiry or investigation in such manner and form as the Ombudsman may deem necessary in the public interest or that the matter will not be inquired into or investigated;
- b) Take appropriate action or steps to call for the remedying, correction and reversal of matters brought to the Office through such means as are fair, proper and effective, including:
 - by negotiation and compromise;
 - by causing the complaint and the Ombudsman's findings to be reported to the superior of the offending party;
 - by referring the matter to the Prosecutor General or the Auditor General or both;
 - by bringing proceedings in a Court of Law for an interdict or other suitable remedy to secure the termination of an offending action or the abandonment or alteration of offending procedures;
 - by bringing proceedings to interdict its enforcement by challenging the validity of such legislation or regulation if the offending action is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra vires;
 - by reviewing such laws as were in operation before Namibia's independence in order to ascertain whether they violate the letter or the spirit of the Namibian Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action;
- c) recommend correction or remedying of the matter investigated.

Following an investigation, the Ombudsman issues a report on his findings and makes recommendations. Such a report is submitted to the relevant authority for its implementation but he has to rely on the power of persuasion to get recommendations accepted and implemented since he does not have enforcement/executive powers to compel corrective action or make binding decisions. The Ombudsman also uses alternative dispute mechanisms such as mediation.

Over and above the Constitutional and statutory obligations placed on the Ombudsman, the Ombudsman adopted public education and outreach as an essential secondary mandate and as such annually embarks on a number of activities in an attempt to make people aware of the role and functions of the Ombudsman, as well as particular focus on their fundamental human rights and freedoms. Some of the more prominent programmes carried out during 2008 are highlighted under "Special Reports/Events and Public Education/ Outreach"

Mandates:

Human Rights

The Office of the Ombudsman is established under Act 89 of the Constitution and the Ombudsman Act no 7 of 1990 as a Constitutional organ of state, subject only to the Constitution and the law. The Constitution and the Ombudsman Act spell out the key mandate areas and powers of the Ombudsman in regard to human rights violations, which include the promotion, protection and enhancement of respect for human rights in Namibia. The Ombudsman has been given a specific human rights mandate, making it the National Human Rights Institution and obligating the Ombudsman to report on the state of human rights in the country.

The Constitution also requires the Ombudsman to assist aggrieved persons when approached for assistance, as follows:

Article 25 (2) of the Constitution provides that ".... aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient."

Contribution to government's State Reports to the UN Treaty Bodies and Committees:

Namibia is a signatory to various international human rights conventions. These conventions spell out the duties and obligations that Namibia undertakes to abide by when acceding to them. Namibia has incurred an obligation to submit reports to different Committees on what measures were taken to ensure realisation of these rights.

In my 2006 Annual Report, I described and assessed the extent to which the government of Namibia has taken appropriate legislative, policy, administrative and budgetary steps as well as other measures to ensure realisation of economic and social justice in respect of the right to work, health, food, water, adequate housing, culture and social security. Namibia's initial report on the Convention of Economic, Social and Cultural Rights has not yet been submitted to the Committee.

The Ombudsman was instrumental in the Law Reform and Development Commission's decision to embark on a project to domesticate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Commission hopes to finalise its draft report and draft legislation early next year.

The Ombudsman is a member of the Inter-Ministerial Committee on Human Rights and Humanitarian Law, whose responsibility it is to compile government's State Reports under the various human rights instruments. The Ombudsman contributed to the 8-12th Periodic Reports of Namibia on the Convention of the Elimination of All Forms of Racial Discrimination (CERD). On 29-30 July 2008 Namibia's Report was considered by the Committee on the Elimination of Racial Discrimination and it made the following concluding observations about the Office of the Ombudsman:

"The Committee commends the State party for the planned increase of the financial and human resources of the Office of the Ombudsman. However, the Committee expresses its concern about the limited mandate of the Ombudsman(art 6).

The Committee encourages the State party to take all necessary steps to strengthen the legislative mandate and the capacity of the Office of the Ombudsman, so that it effectively fulfills its mandate. The Committee, while noting that only a small number of complaints have been received, reminds the State party that this may be due to victims' lack of information about their rights and of the accessibility of legal remedies. The State party is therefore encouraged to sensitize the general public about their rights and the availability of legal remedies for victims of racial discrimination".

Human Rights Complaints

Of the total number of 1565 complaints received during 2008, 138 related to human rights violations, which is 35 less

than the previous year. The category includes assaults by police and prison officers, ill treatment of prisoners, overcrowding of police cells, delays in the finalisation of appeals, criminal trials which do not take place within a reasonable time, failure to provide prisoners with the record of proceedings, delays or refusal to provide legal aid and to give reasons for the refusal. An analysis of the type of complaints against the Ministry of Justice shows that a large number of the complaints relate to the unwarranted delays by Clerks of Court in the preparation of appeal records for filing with the Registrar of the High Court.

Case Summaries

Right to a Fair Trial

The complainant already served a custodial sentence of 5 years and 7 months when the Supreme Court set aside his conviction and sentence on appeal. The Supreme Court ordered that if the complainant is to be prosecuted again and convicted, any sentence to be imposed should take into account the periods already served; the complainant was prosecuted, convicted and sentenced to 8 years imprisonment of which 6 years were suspended.

The complainant indicated that he had already served 5 years and 7 months and where he is now sentenced to an effective term of 2 years imprisonment, he had already served more than 2 years and he is thus entitled to be released without serving any custodial sentence. He puts it as follows:"... means the period served, i.e. 5 years and 7 months shall be factored or counted in the two years effective sentence. The simple arithmetic result is nothing will be left as a term of imprisonment, i.e. my time in prison has lapsed." He further complained that the prison authority failed to comply with the order made by the Supreme Court, by not taking into account the periods already served and such non-compliance of the Supreme Court order is a violation of the constitutional provisions.

Following an investigation, the Ombudsman found that:

- the Presiding Judge complied with the directive of the Supreme Court;
- the Presiding Judge did not pay lip service to the directive;
- the warrant of committal signed by the Presiding Judge states that the complainant should serve 2 years effective

tive imprisonment; that was the order of the court and that was the only order the prison authority should comply with.

Right to Privacy

When his neighbour started to build flats on his erf, the complainant requested the building inspector of the Council to ensure that his neighbour constructed a boundary wall between the erven. The building inspector gave his assurance in this regard but the wall was never constructed. The flats were completed with their entrance doors facing the bedroom window of the complainant. Tenants started to occupy the flats and thereafter complainant's trouble with the neighbours began. The complainant felt that his right to privacy was being violated by the late night partying and accompanying loud music. He wrote several letters of complaint to the Council and even requested an audience to air his grievance, but he received no response.

Following an investigation into the matter, the Ombudsman found that:

- it was highly irregular for the Council to permit the building inspector to draft plans for residents of the town; that his colleague, the health inspector, be allowed to approve such plans and that the building inspector then be allowed to inspect the building;
- the manner in which the neighbour was allowed to build the building was highly irregular;
- the building inspector was either grossly negligent in the execution of his duties or failed to execute his duties.

Appeals

The complainant was sentenced in the regional court on 5 November 2004 and he filed his notice of appeal with the Clerk of Court shortly thereafter. When he received no feedback from the Clerk of Court, he complained on 2 February 2006 to this Office about the delay; on 4 April 2006 the Clerk of Court informed the Ombudsman that the tape recordings were sent to Compuneeds on 5 November 2005 and that she was still waiting for the record of proceedings. The Ombudsman took up the delay in the transcription process with Compuneeds in a letter dated 22 June 2006; on 17 February 2007 the Ombudsman informed the complainant that the matter was with the Registrar pending a hearing date; the appeal

was heard on 27 April 2007. After our file was closed, the complainant again approached us, this time about the delay in the judgment of the court of appeal. The Ombudsman took up the matter with the Registrar in letters dated 22 February 2008, 1 August 2008 and 21 August 2008; on 8 September 2008 the Office of the Registrar informed the Ombudsman that judgment was not yet delivered.

The complainant was sentenced in the regional court on 18 September 2001 and he filed his notice of appeal on 31 October 2001, captured under number 15/01 in the appeal register of the Clerk of Court. He did not receive any response from the Clerk of Court and on 30 January 2003 this Office received his written complaint. It appeared that the record of proceedings was incomplete and the presiding officer attempted to reconstruct the record. The appeal record was eventually received by the Registrar and numbered CA 161/05; according to the complainant it took the Clerk of Court more than 3 years to file the appeal record with the Registrar. The complainant subsequently appeared in the High Court on a number of occasions, with his last appearance on 13 March 2007, but he never heard anything thereafter. The Ombudsman's investigation revealed that the matter is pending for judgment.

Maladministration

As was the case in the past, the bulk of complaints received relate to the maladministration mandate. Some of the complaints received were somewhat unique, for example the complaint regarding the library services at Otavi and the "over-the-phone" postponement of cases at Mukwe periodical court, while other complaints were mostly about subsistence and travel allowances, medical aid registration, passport and other citizenry issues, etc. Even though some of these complaints may seem routine, it remains a pleasure to be of assistance to complainants and to resolve matters received by us.

Case Summaries

Daily Subsistence Allowances (DSA)

The complainant approached us in March 2007 regarding the fact that she attended a three months workshop in 2001 and was allegedly never paid her DSA. Following our intervention, the complainant was paid an amount of N\$17 000 in October 2008.

The complainant and two others approached us regarding the fact that they were appointed to respectively administer three towns in the Caprivi Region. After they were working at their designated duty stations for some time, they were requested to assist with the workload at the regional office for nearly one year. They initially received their DSA for two months, whereafter payment was stopped without any reason. They took up the matter within the regional office but without success.

Following our intervention, the DSA was paid to all three complainants.

Drivers employed by government approached us regarding the fact that they transported a cultural group from the North to Windhoek as part of the welcoming celebrations of the Zimbabwean Head of State during his visit to Namibia.

Although they were on official duty no arrangements were made pertaining to their accommodation and food, neither were they given daily subsistence allowances to cover their expenses. Their efforts to resolve the matter within the Ministry proved fruitless.

Within three months after our intervention, we received confirmation from the relevant institution that the drivers were paid their allowances; the drivers also phoned to confirm payment and to express their gratitude to the Office.

Overtime

The complainant approached us in August 2006, alleging that he worked for an emergency relief programme of the Prime Minister's Office in 2004, but that all attempts by him since then to get his overtime payment from his Ministry, proved futile. Although it took us more than two years to convince the Ministry that the complainant was entitled to overtime payment, an amount of N\$16 399,05 was finally paid to complainant in October 2008.

Access to Public Library

The complainant approached us with an allegation that the Otavi Public Library was frequently closed during office hours. We visited the library on two different days and it was found that the library was indeed closed while it was supposed to be open to the general public; during one of the visits our

investigators were informed that the librarian had not been at work for two days. The matter was brought to the attention of the Permanent Secretary of the Ministry of Education, who put measures in place to ensure that there is always someone available to assist the community.

Translation in rank

The complainant informed us that she was employed as a labourer at the Otjiwarongo State Hospital since 1992. In 2002 she was requested to assist as a cook due to a shortage of manpower. After assisting as a cook for several years, she applied for a translation in rank from labourer to cook, since the salary for a cook is higher than that of a labourer; she was informed that once the position becomes available she would be considered first. However, although several positions became available over time, she was never considered. When she approached her supervisor, he confirmed that he was in support of her being translated to the rank of cook and that he wrote several letters to this effect to the Human Resource Division, but without success.

Following our intervention, where we had to explain to the Human Resource Division that it was quite within the complainant's right to request a translation in rank under the particular circumstance, the complainant was translated in rank from a labourer to a cook.

Police conduct

The complainant, an Angolan citizen, informed us that he was nearing the end of serving a three year sentence at Oluno Prison; further that the police impounded his vehicle and refuse to release it, alleging that it was attached as part of the sentence imposed by the court.

After perusal of the relevant documentation, we found that there was nothing that warranted impounding of the vehicle; upon enquiries to the Regional Commander, we were informed that the vehicle was impounded because the complainant, in his initial affidavit, admitted that he bought the vehicle with money which he stole from the plaintiff in the case; based on his admission, the police was of the opinion that the vehicle could be impounded, although the vehicle was never used as an exhibit in the case, neither was there a request for forfeiture and no order was thus made regarding the vehicle.

During our investigation into the matter, it also transpired that the main reason for keeping the vehicle seemed to be that the lawyer for the plaintiff requested the police to keep the vehicle while lodging a civil claim against the complainant. We advised the police that the vehicle was detained illegally and that they should release it to the complainant. The police informed us that the complainant could collect his vehicle, which the complainant did upon his release from prison shortly afterwards.

Community matters

The complainant approached us on behalf of the Aminius community during our outreach program in the Omaheke region. He indicated that the Community with a population of approximately 20 000 needed a health centre rather than a clinic; the nearest health centre was at Gobabis, 200 km's away. Furthermore, the clinic did not have an ambulance and several patients died due to the lack of transport in the area. He alleged that the Ministry of Health and Social Services, via the Regional Director was approached on several occasions in this regard, but all in vain.

We approached the Regional Director for comment and was informed that a submission to erect a health centre at Aminius was being processed for inclusion in the 2009/10 budget; furthermore that it was resolved to provide the Aminius clinic with an ambulance. The complainant was informed accordingly.

Periodical court

Members of the Namibian Police complained that cases could not be finalised due to the fact that periodical court members did not show up at a certain town; furthermore that most of the cases were finalised and majority of suspects willing to plead guilty, but that cases were postponed telephonically at the last minute.

They also indicated that law enforcement officers were at times phoned at 08h30 while waiting at the periodical court room for the court members, with instructions to transport suspects to the magistrate's court, a distance of approximately 200 km's, an impossible task due to transport constraints, especially if arrangements are not made in advance.

Following our intervention and an investigation by the Chief of Lower Courts, the responsible persons were reprimanded and they were told not to repeat their behaviour.

Non-approval of passport applications

The complainant approached this office and alleged that both her husband and she have permanent residence in Namibia and that their two children, who were born in Namibia have Namibian citizenship and are therefore entitled to Namibian passports. They initially applied for passports for the kids and received them, but when they re-applied for new passports, they were informed that the children do not qualify for passports. Following our intervention, both the children were issued with passports. However, the complainant informed us the next day, that after all the trouble we went through to obtain the said passports, her handbag was stolen with these passports inside and the whole process had to start again!

Delay in issuing citizenship

The complainant in the matter applied for Namibian citizenship by marriage in September 2003; the documents attached to the initial application apparently got lost and was re-submitted by the complainant on numerous occasions with no results forthcoming.

The matter was investigated and it was found that the complainant indeed submitted her application 5 years earlier and that the Ministry of Home Affairs had failed to properly attend to the application. The Ombudsman however had to issue a subpoena and make a formal recommendation to the Permanent Secretary before the Ministry finalised the matter.

Ministerial payments not forthcoming

The owner of a guest house in Maltahöhe complained that a government official was accommodated at her guest house for a period of 30 days on request from the Ministry but that they failed to settle the account although they promised to do so on numerous occasions. Following our intervention, an amount of N\$10 408,00 was paid to the complainant.

<000>

The complainant indicated that she rendered services as a literacy promoter in Keetmanshoop and she did not receive her payments from the Ministry for two months. Following our intervention, the complainant received the money due to her in the amount of N\$3 768,36.

Delay in issuing a driver's license

The complainant informed the office that he applied for the renewal of his driving license 5 years ago but that issuing of his new license was delayed due to alleged incompetence. As a result he was negatively affected as he needed his driver's license to carry on with his business. Following our intervention, the complainant was issued with his driving license within two days.

Environment

As has been the case in the past, the Office is still receiving only a very limited number of complaints relating to the environment; not much has been done in terms of specifically making citizen's aware that they can also complain to the Ombudsman about environmental issues; however, the intention is still to launch a campaign to address this shortcoming.

Statistical breakdown

Overview

A total of 1565 complaints were received, 94 more than the previous year. There was a slight increase in the number of non-jurisdictional complaints received, totaling 271 compared to 229 in 2007. The majority of complaints, 1208 in total, were from males and only 341 from females. There was a slight increase of 45 "in person" complaints compared to the previous year.

It seems from the division of complaints resolved/unresolved that the Office of the Ombudsman has reached a constant for the past 3 years where we resolved 74% of the complaints we receive and carried over to the next year, 26% of the complaints received. It therefore means that roughly a quarter of the complaints received by this office are not finalized within the year that we received it. Various reasons can be put forward for this and in 2008, surely the fact that a director investigations was only appointed as from September 2008 as well as other staff resignations can be advanced as one of the reasons. Another would be the poor response time, if a response is received at all, from the various Ministries and other role players. We unfortunately find us in a situation where written enquiries from this office is met with a stone-walled silence time after time. During 2008 our average process-

ing time per complaint was 99 days, exceeding our service promise of 90 days by 9 days. This is at least an improvement from our average processing time of 123 days in 2007 and 135 days on average in 2006. It therefore calculates to an improvement of roughly 5 weeks on our average processing time.

Where we reported a decline in complaints against local authorities in the previous years, there was an increase of 22 complaints against local authorities in 2008.

The Ministry of Justice topped the list of complaints against government institutions as was the case in 2007 and 2006. The number of complaints increased to 305 compared to 277 the previous year.

Although the Namibian Police is second on the list of complaints against government institutions, the decline in complaints against the police, as in the previous years, continued. A total of 263 complaints were received compared to 273 in 2007 and 384 in 2006. Complaints against the police relate mostly to police conduct with allegations of assaults, failure to investigate reported cases and lack of information about progress in the investigation, failure to register charges against colleagues, personal property not returned to persons upon release. Police officers complained about the application of the promotion policy which seems not be applied consistently, payment of daily subsistence allowance, transfer to other stations, etc.

Although the prison authority is third on the list of complaints against government institutions, the decline in complaints against the prison authority, as in previous years, continued. A total of 144 complaints were received compared to 195 in 2007 and 305 in 2006. Complaints against the prison authority relate mostly to allegations of assault, failure to pay gratuity, loss of property and money booked in by officers at the time of committal and transfer to other prisons. Prison officers complained about the lack of promotion and the delay in payment of daily subsistence allowance.

During 2008 43,5 % of all our complaints were received in writing and about 28% during intake clinics where we visited places not serviced by a permanent regional office. In 2007 42,7% of our complaints reached this office in writing whilst 26% of the complaints were received during personal visits to the various offices. In 2006 the personal visits to our offices were slightly more as we received 34.6 % of our complaints

in person. It seems therefore that our distribution with regard to the ways in which we received complaints remained roughly the same for the past two years, but a decrease of about 7% with regard to personal visits from 2006 to 2008 is observed whilst the opposite is true with complaints received in writing totaling 43,5 % in 2008 and 37,9% in 2006.

We further saw a marginal increase of 67 jurisdictional complaints received in comparison to the jurisdictional complaints received in 2007. During 2008, 66,7% of all complaints were jurisdictional, in 2007, 66,4 % and in 2006, 69,7%. Roughly two thirds of all complaints received were jurisdictional.

If one looks at the statistics according to the different mandates of the Office, the following can be reported for 2008: Of the total complaints received, 55,7 % related to maladministration, 9% to human rights violations, and 3,7% to corruption and the environment; 31,6% miscellaneous complaints, which relate to non-jurisdictional matters, were received. Compared to previous years, the picture remains more or less constant.

On a Lighter Side...

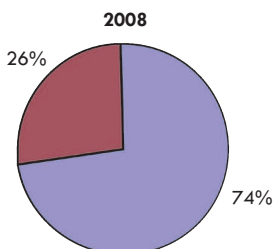
The following complaint was registered on our Case Management System:

“The Complainant alleges that in 2007, he made an application to the Ministry of Local Government and Housing to replace his father who passed away. His case is still with the lawyers. “

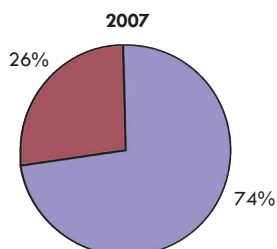
To which our investigator responded as follows: “Since the complainant is assisted by a lawyer, we advised him to proceed with the lawyer.”

Charts

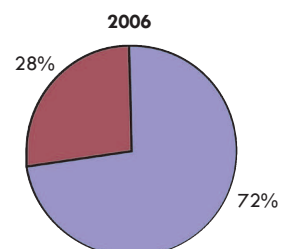
Complaints resolved/unresolved



UNRESOLVED AT 31/12/2008
RESOLVED AT 31/12/2008

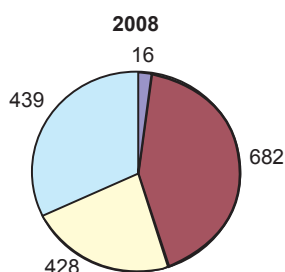


UNRESOLVED AT 31/12/2007
RESOLVED AT 31/12/2007

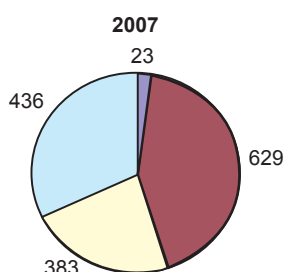


UNRESOLVED AT 31/12/2006
RESOLVED AT 31/12/2006

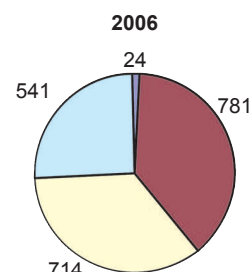
Complaints by intake type



IN PERSON
INTAKE CLINIC
IN WRITING
TELEPHONIC

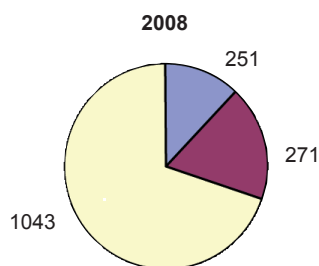


IN PERSON
INTAKE CLINIC
IN WRITING
TELEPHONIC

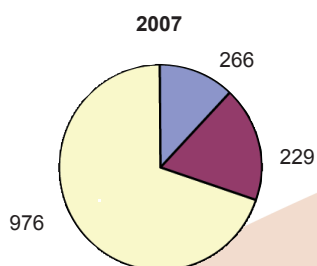


IN PERSON
INTAKE CLINIC
IN WRITING
TELEPHONIC

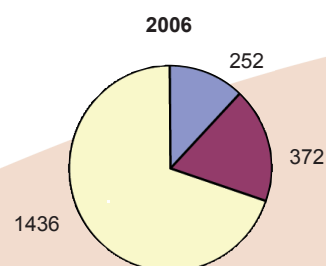
Complaints by complaint type



REQUEST FOR INFORMATION/ADVICE
NON-JURISDICTIONAL
JURISDICTIONAL

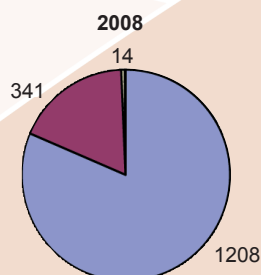


REQUEST FOR INFORMATION/ADVICE
NON-JURISDICTIONAL
JURISDICTIONAL

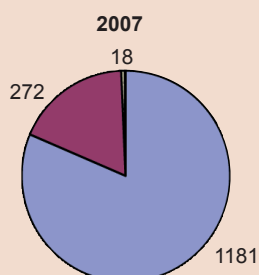


REQUEST FOR INFORMATION/ADVICE
NON-JURISDICTIONAL
JURISDICTIONAL

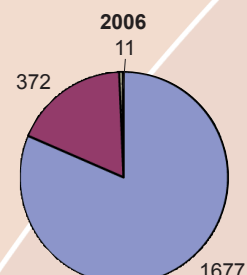
Complaints by gender



MALE
FEMALE
GROUP

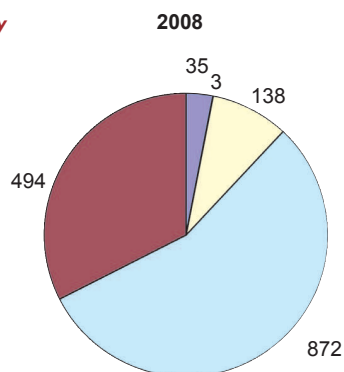


MALE
FEMALE
GROUP

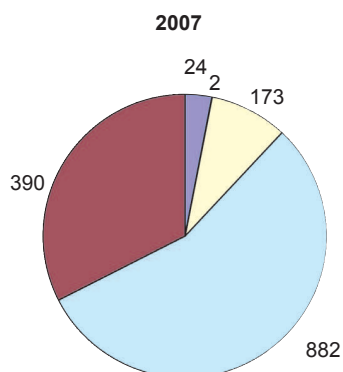


MALE
FEMALE
GROUP

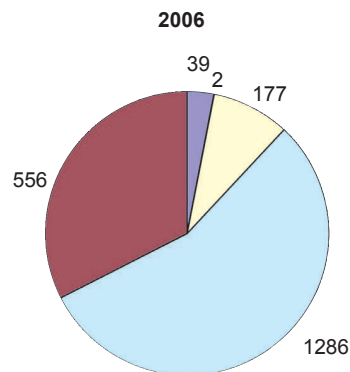
**Complaints by
mandate**



CORRUPTION
 ENVIRONMENT
 HUMAN RIGHTS
 MALADMINISTRATION
 MISCELLANEOUS

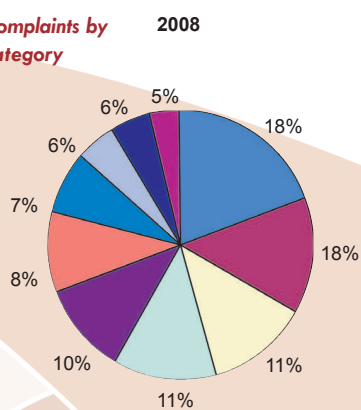


CORRUPTION
 ENVIRONMENT
 HUMAN RIGHTS
 MALADMINISTRATION
 MISCELLANEOUS

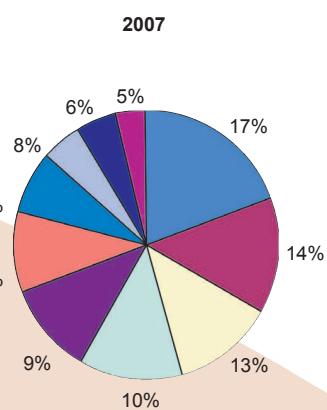


CORRUPTION
 ENVIRONMENT
 HUMAN RIGHTS
 MALADMINISTRATION
 MISCELLANEOUS

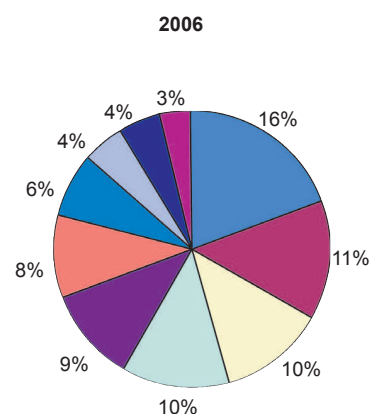
**Complaints by
category**



MINISTRY/INSTITUTION CONDUCT
 ADMINISTRATION OF JUSTICE
 POLICE CONDUCT
 EMPLOYMENT MATTERS
 HUMAN RIGHTS VIOLATION
 DISPUTES INVOLVING PRIVATE PERSONS OR INSTITUTIONS
 PRISON CONDUCT
 COMPENSATION
 PENSION
 COURT DECISIONS

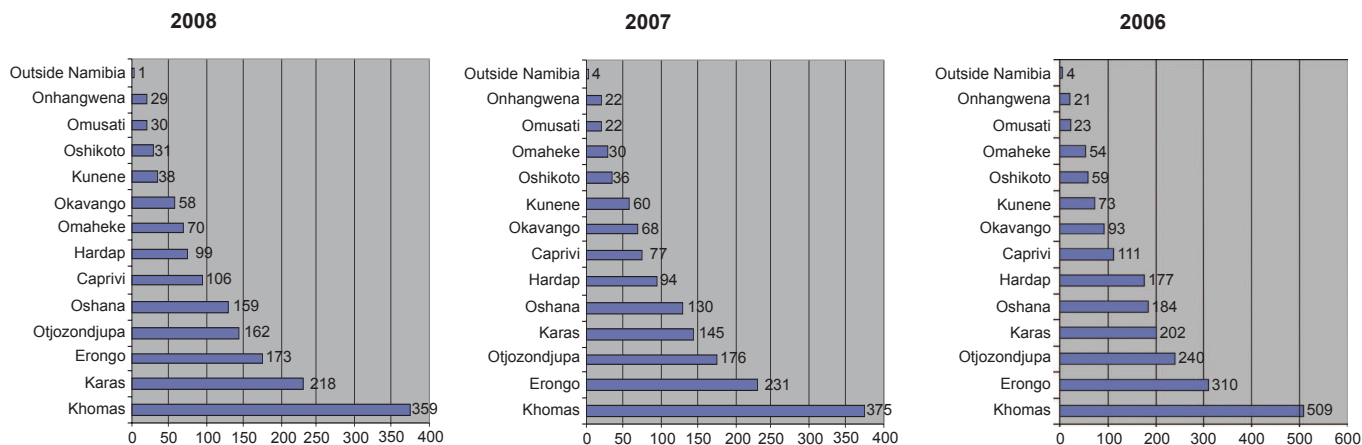


MINISTRY/INSTITUTION CONDUCT
 ADMINISTRATION OF JUSTICE
 POLICE CONDUCT
 EMPLOYMENT MATTERS
 HUMAN RIGHTS VIOLATION
 DISPUTES INVOLVING PRIVATE PERSONS OR INSTITUTIONS
 PRISON CONDUCT
 COMPENSATION
 PENSION
 COURT DECISIONS

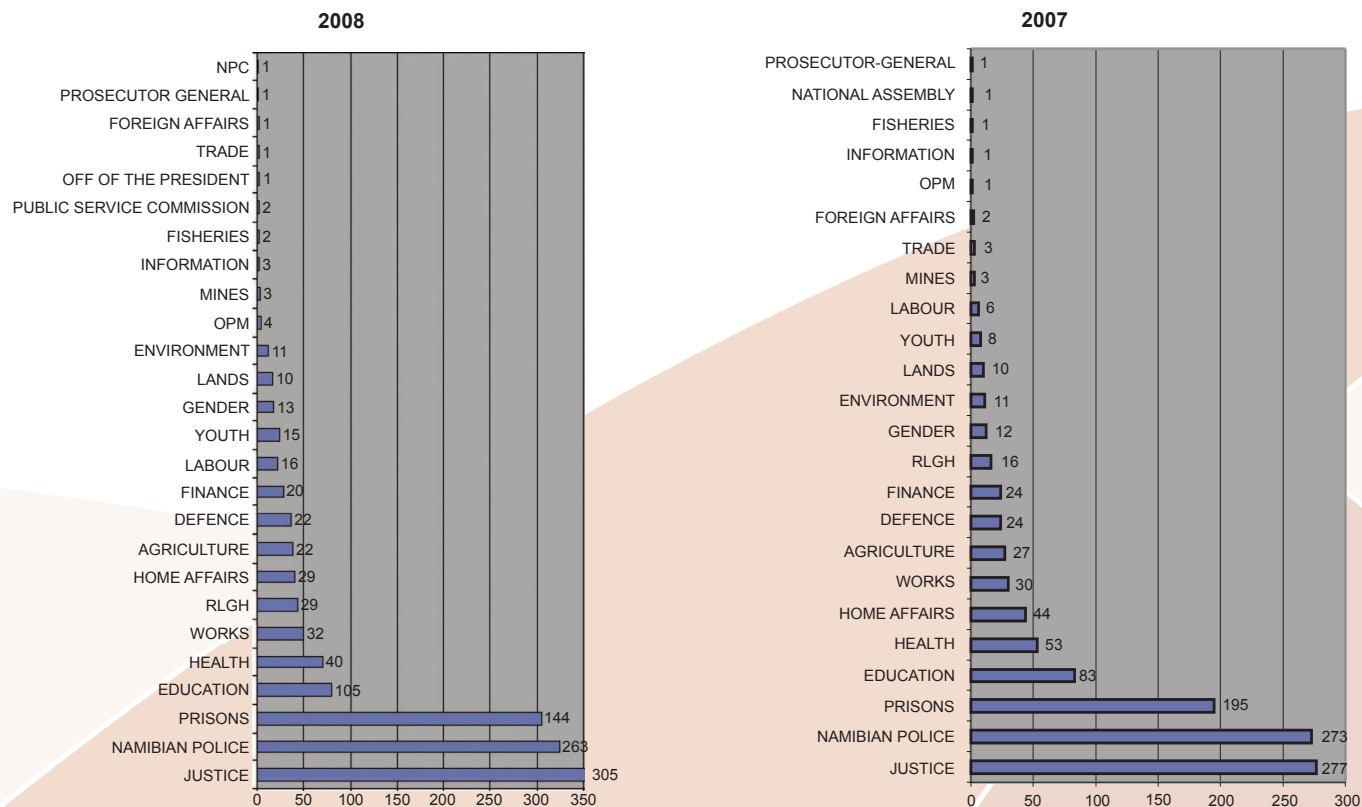


MINISTRY/INSTITUTION CONDUCT
 ADMINISTRATION OF JUSTICE
 DISPUTES INVOLVING PRIVATE PERSONS OR INSTITUTIONS
 COMPENSATION
 EMPLOYMENT MATTERS
 POLICE CONDUCT
 PRISON CONDUCT
 PENSION
 COURT DECISIONS
 HUMAN RIGHTS VIOLATIONS

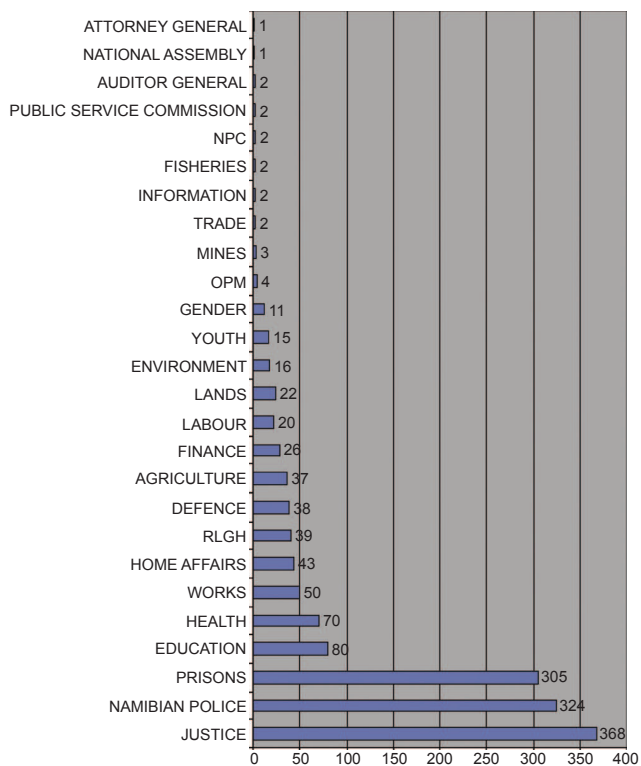
Complaints by region



Complaints against government institutions

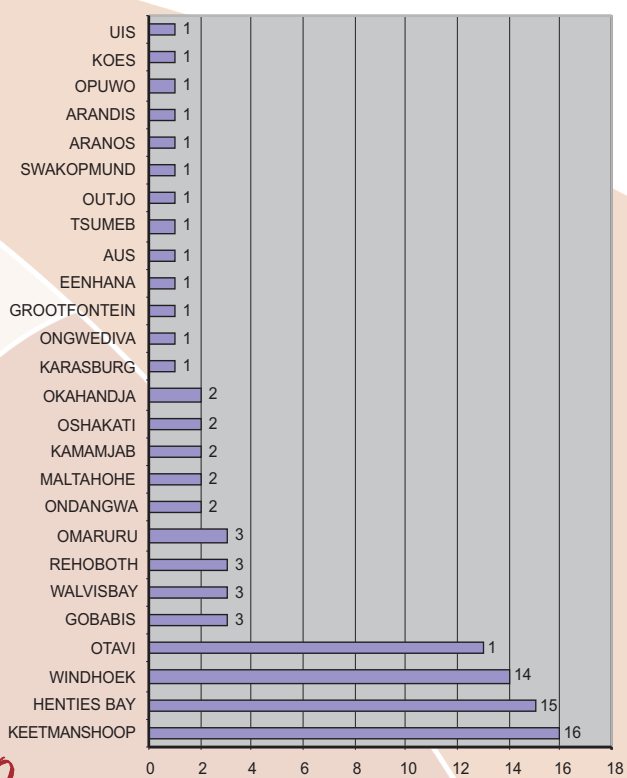


2006

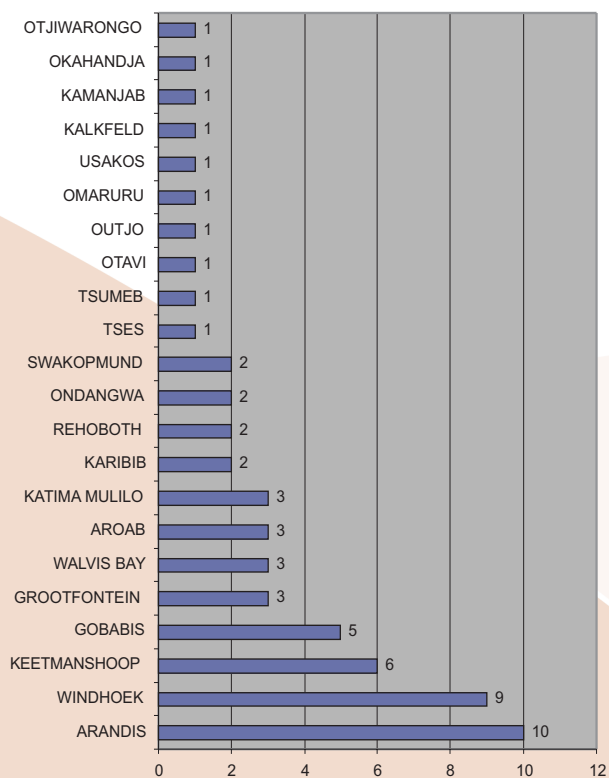


Complaints Against Local Authorities

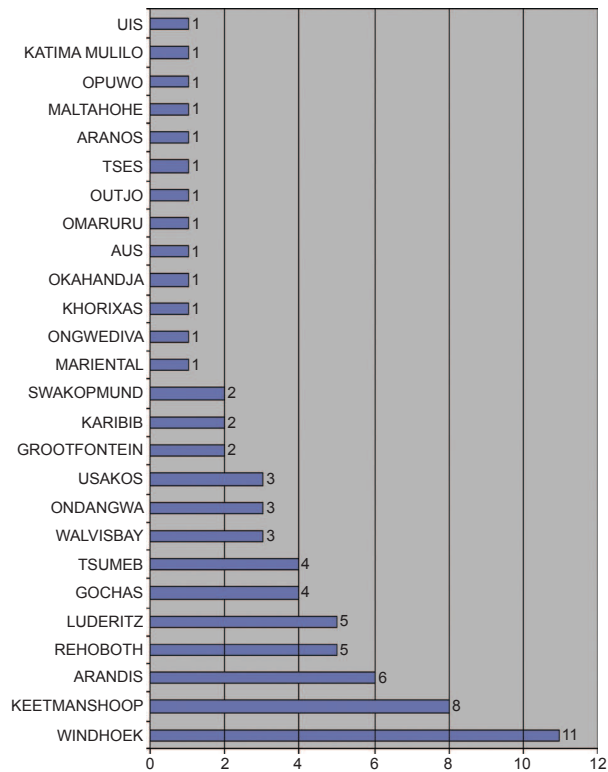
2008



2007

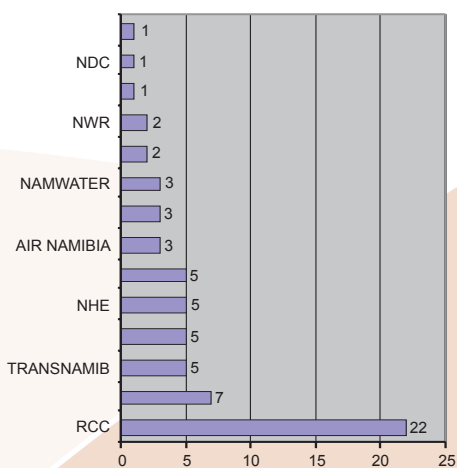


2006

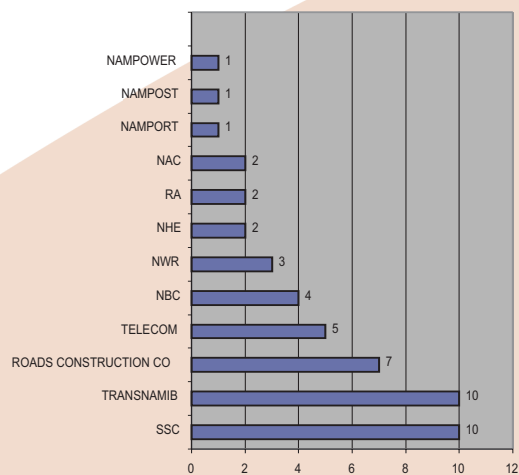


Complaints Against Parastatals

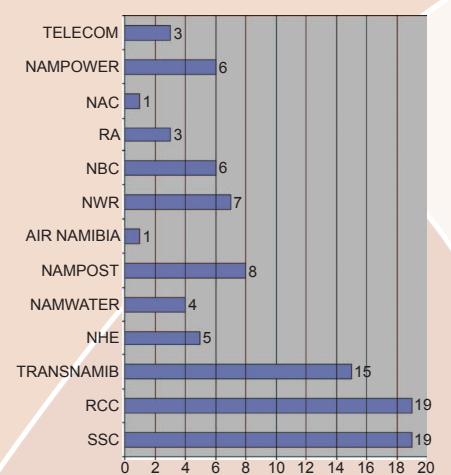
2008



2007

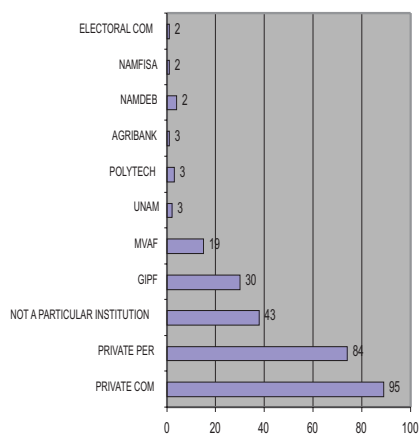


2006

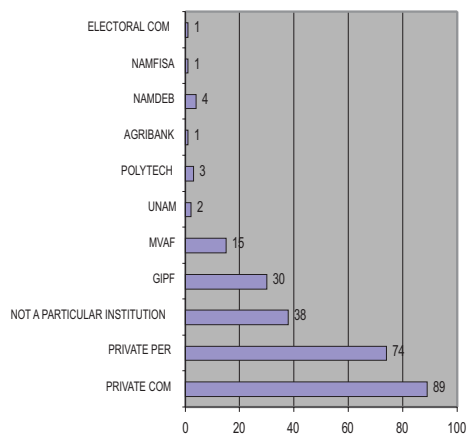


Complaints Against Other Institutions

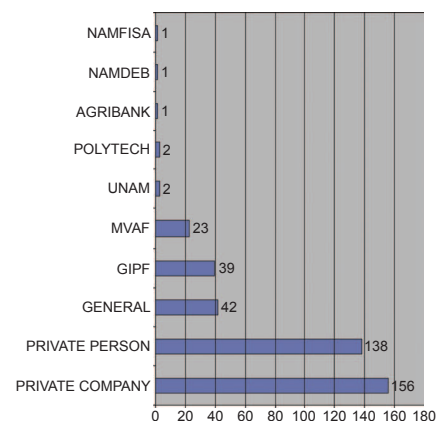
2008



2007

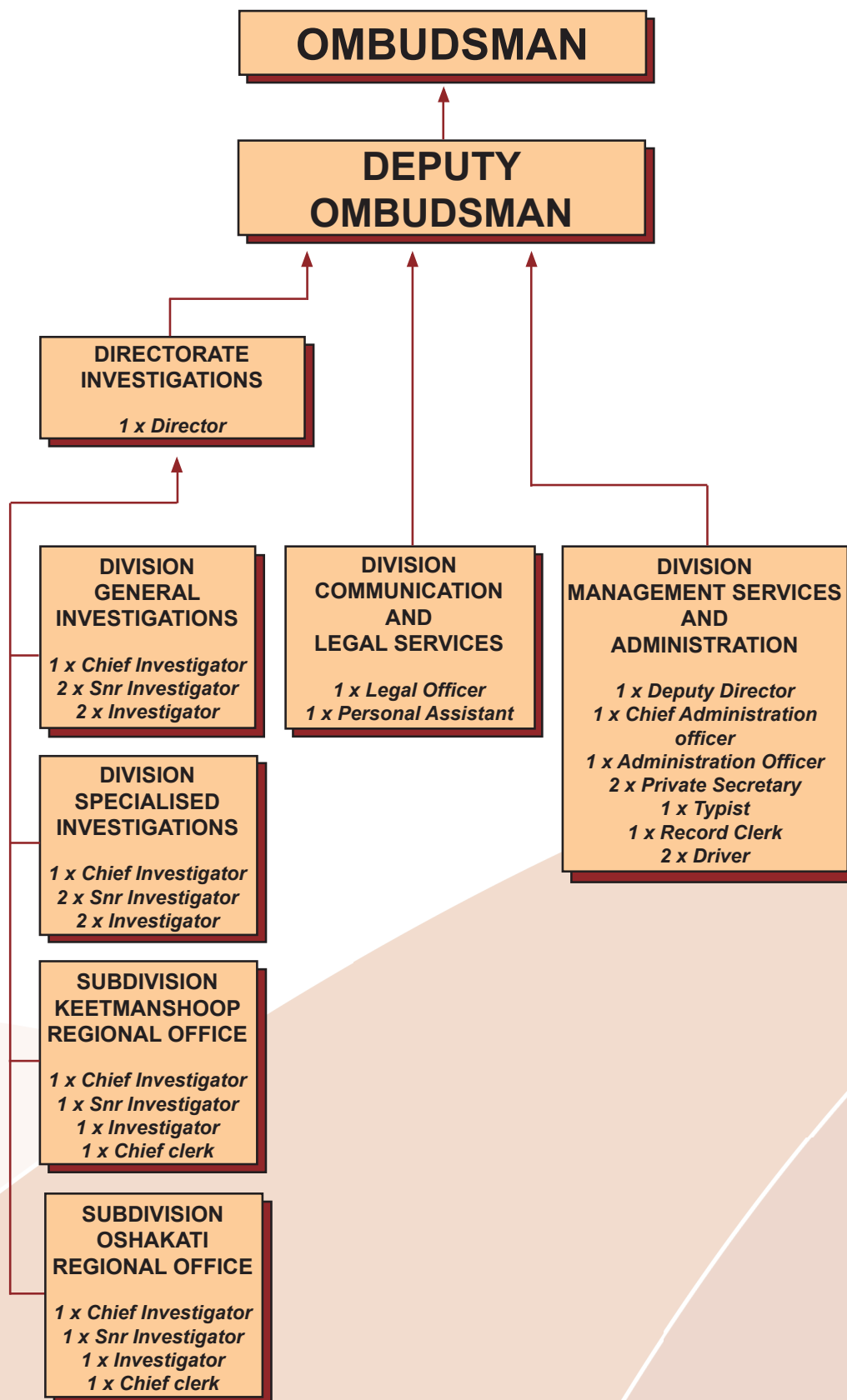


2006



MANAGEMENT SERVICES AND ADMINISTRATION

Organisational structure



General

The Management Services and Administration Division provides support to the line function in terms of human resources and financial administration, logistical management and general administrative support.

Human Resources

Appointments and termination of services

A number of termination of services occurred during 2008, as follow:

- Ms Naomi Somaes, Chief Investigator, resigned with effect from 31 June 2008
- Mr Paul Rooi, Senior Investigator, resigned with effect from 31 May 2008
- Mr Henry Jansen, Chief Administrative Officer, resigned with effect from 30 November 2008

The following new staff members were appointed during 2008:



Ms Eileen Rakow was appointed as Director: Investigations with effect from 1 September 2008



Mr Vincentius !Goraseb was appointed as Senior Investigator at the Keetmanshoop regional office with effect from 1 September 2008



Mr Johannes Rooi was appointed as Investigator at the Keetmanshoop regional office with effect from 1 October 2008



Ms Ileni Indongo was appointed as Investigator at the Oshakati regional office with effect from 1 October 2008



Ms Jorina Baard was appointed as Control Administrative Officer at the Keetmanshoop regional office with effect from 1 May 2008



Mr Sakeus Hangula was appointed as driver at Windhoek head office with effect from 1 April 2008

Staff training and participation in workshops/seminars/conferences

Staff were involved in the following training activities/workshops during the course of 2008:

Kampala, Uganda	:	Human Rights
Kampala, Uganda	:	National Human Rights Institutions Forum Meeting
Gaberone, Botswana	:	Law Enforcement Executive Development Programme
Lilongwe, Malawi	:	HIV/Aids & Human Rights
Livingstone, Zambia	:	Sub-regional Training Workshop on National Inquiries for National Human Rights Institutions
Mariental, Namibia	:	Workshop on main streaming HIV/AIDS and gender
Swakopmund, Namibia	:	Filing and Record Management Course
Windhoek, Namibia	:	Training in environmental law and related issues



The Ombudsman and an investigator during the environmental training which was presented by Dr Oliver, Director of the Human Rights Documentation Centre at the University of Namibia

Financial Resources

Description	Amount (N\$)		
	2006/7	2007/8	2008/9
Personnel Expenditure	3 427 000	3 953 000	4 372 000
Travel and Subsistence Allowance	250 000	305 000	389 436
Materials and Supplies	58 000	57 000	60 000
Transport	208 000	165 000	772 000
Utilities	111 000	61 000	44 000
Maintenance Expenses	38 000	23 000	35 000
Other Services and Expenses	287 000	194 000	315 622
Membership Fees and Subscriptions	18 000	10 000	45 000
Furniture and Office Equipment	25 000	10 000	118 942
Total appropriation	4 422 000	4 778 000	6 152 000

Transport

The Office fleet consist of seven vehicles, as follow:

- 1 x Nissan double cab utilised for regional complaint intake clinics
- 2 x Corsa bakkies utilised at the Southern and Northern regional offices
- 2 x Mazda 4x4 bakkies utilised at the Southern and Northern regional offices
- 1 x Combi utilised locally for investigations
- 1 x Small sedan utilised locally for administrative tasks

The Combi as well as the small sedan are in poor condition and will have to be replaced within the short term, while an additional vehicle is required for investigations.

Stock Control

Equipment, materials and supplies which were budgeted for, were acquired, however, the receipt, issuing and control of stock were not managed satisfactorily due to the unsatisfactory office accommodation and a shortage of staff. An overhaul of the entire stock situation is planned for 2009 when new office accommodation should be ready and provided the necessary qualified staff can be recruited.

Accommodation

After a long struggle, suitable office accommodation was identified and renovations to the building, located on the corner of Feld and Lossen Streets, started in July 2008; it is expected that the relocation will take place in January 2009.

Information Technology

Although staff members are connected to a computer network and have access to e-mail and internet facilities, some of the hardware and software are outdated and adequate funds are required to upgrade the entire information technology system. It is also imperative that the regional offices in Oshakati and Keetmanshoop should be properly linked to the network to enable them to use the computerised case management system. Different options will be looked into in the new year.

The Office website, www.ombudsman.org.na, was reconstructed with a different, user friendly program to allow staff members in the Office to update and maintain the site; however, staff still experienced problems in executing the updating.

Office Support Systems

- A switchboard with adequate incoming and outgoing lines is in use at head office in Windhoek, while one each are in use at the Keetmanshoop and Oshakati regional offices
- Three fax machines are in use at head office in Windhoek, while one each are in use at the Keetmanshoop and Oshakati regional offices
- Two photo copiers are in use at head office in Windhoek, while both regional offices have struggled due to a lack of photo copiers; this problem will hopefully be resolved in 2009



The hazards of being accommodated in an industrial area.. the site that greeted staff members when they returned from lunch one day after the hand break of a large truck failed...

SPECIAL REPORTS/EVENTS AND OUTREACH/PUBLIC EDUCATION

Follow up police cells visit

Introduction

Follow up visits to selected police cells throughout the country were carried out during August 2008, prompted by amongst others –

- the constitutional and statutory obligation to investigate matters in respect of which the Ombudsman has reason to suspect that fundamental rights and freedoms are diminished or violated;
- questions from concerned organisations, members of the public and the media as to whether there were any improvements in the situation as it related to police cells during 2006 and following my Special Report to Parliament at the time.

Due to staff and financial constraints, we attempted to visit at least those facilities which were identified in the 2006 report as the worst cases, as follows:

Khomas Region:

Katutura, Wanaheda

Erongo Region:

Walvis Bay, Narraville Sub-station, Swakopmund, Karibib, Omaruru

Hardap and Karas Regions:

Luderitz, Mariental, Kalkrand, Rehoboth

Otjozondjupa, Oshikoto, Oshana, Ohangwena, Kavango and Caprivi Regions:

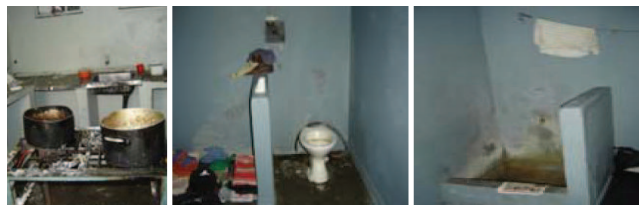
Okahandja, Otjiwarongo, Otavi, Tsumeb, Oshivelo, Oshakati, Grootfontein, Rundu, Katima Mulilo

The visits revealed that some vast improvements occurred in some cases, while in others, the situation remained unchanged. Two examples are as follow:

Grootfontein:



2006....the entire facility should be demolished and rebuilt....



2008....the entire facility was extensively renovated....

Improvements:

- The entire facility was extensively renovated
- Food supply is now sufficient
- Cell population is diminishing slowly, possibly as a result of permanent magistrate being appointed

Oshivelo:



2006....food prepared outside due to kitchen not being fit for use; toilets as well as facility generally in a bad condition....



2008....clearly this facility should be on the priority list for renovation....

Improvements:

- None

Recommendations:

The following recommendations were made in the follow up report:

- That the female detainees at Wanaheda holding cells be transferred to the women's section of the Windhoek Central Prison until such time that the female cell at the station is renovated to provide proper accommodation;
- that a concerted effort be made between the relevant Ministries to ensure that long outstanding cases are processed as a matter of urgency in order to reduce cell populations;
- that prison facilities be equipped to accommodate trial awaiting detainees who are not given (or cannot afford to pay) bail. The infrastructure already exist at prison institutions to properly take care of detainees and this would greatly alleviate the responsibility of police officers to take care of detainees for extended periods of time;
- social workers should become involved in those cases where parents request juveniles to remain in the police cells because they do not want them at home; thought should be given to construct juvenile detention centres as an alternative if the problem cannot be resolved in any other way;
- in the 2006 report I put forward as an idea to partly resolve the cleaning material issue, that all police stations be allocated a specific amount for cleaning materials, no matter how small and that it be up to each station to control the amount and order stock accordingly, however sparsely, to cover the whole financial year. It is unfortunate that this was not considered and as a result the problems still continue; I would like to again reiterate the suggestion as a means of solving the matter;
- those cells in the worst conditions be prioritised for urgent renovation.

Human Rights Training for Prison Officers

During August 2007, the Ombudsman approached the French Embassy in Namibia for financial assistance for the Office's human rights programme. The human right projects identified by the Ombudsman were:

- a national human right conference to develop a national human rights action plan;
- training of community activists on how to assist victims of domestic violence to obtain protection orders;
- human rights training for prison officers; and
- a national multi-media awareness campaign.

After signing of the agreement with the French Ambassador, Mr Philippe Bossiere on 5 June 2008, the Ombudsman immediately consulted possible partners to assist in the implementation of the projects. After these consultations, the Ombudsman realised that the Office could not afford the services of the partners and a decision was made to start with the human rights training of prison officers first. With the cooperation of the prison management a training programme was compiled where the Ombudsman and his personal assistant visited each prison to conduct the human rights training workshops. The necessary workshop materials were acquired and the first workshop started at Luderitz Prison on 18 -19 November 2008; a total of 30 members participated in the workshop. The next workshop took place at Keetmanshoop Prison on 20 -21 No-

Signing the agreement with the French Ambassador



ember 2008 and 19 members participated; from 24 - 26 November 2008 the workshop took place at Hardap Prison near Mariental and 119 members participated.

The training included the following topics:

- Chapter 1: What are Human Rights
- Chapter 2: Limitation of Rights
- Chapter 3: The Namibian Constitution and Human Rights
- Chapter 4: The Relevance of Human Rights Training to Prison members
- Chapter 5: Universal and Regional Human Rights Instruments Relevant to the Protection and Treatment of Prisoners
- Chapter 6: Human Rights Violations
- Chapter 7: Institutions for the Promotion and Protection of Human Rights
- Chapter 8: Implementation of International Standards at National Level and the Prison Act, Standing Orders and Commissioner's Directives
- Chapter 9: Examples of Complaints by Prisoners

HIV/AIDS and Human Rights (presented by Ms Christina Saunderson)

During and after the presentations, the officers were afforded an opportunity to raise their concerns, which concerns were recorded. The Ombudsman also inspected all three prisons and photographs were taken of the conditions, with the intention to compile a report for the attention of the Minister of Safety and Security at the end of the training.

The workshops were described as very informative and generally regarded as successful. The training will be conducted at the remaining ten prisons during 2009. In the meantime, Dr Oliver Ruppel of the Human Rights and Documentation Centre at UNAM was contracted to compile a human rights training manual for prison members which will be distributed to all officers.



Public Hearings on Racism/Racial Discrimination : Perception or Reality in Namibia?

Recalling that the Durban Declaration, 2001 inter alia urges states -

- to adopt and implement effective measure and policies in addition to existing anti-discrimination laws, which encourage all citizens and institutions to take a stand against racism, racial discrimination, xenophobia and related intolerance;
- to adopt and implement measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance.

the Ombudsman decided to hold public hearings on racism and racial discrimination to determine whether racism or racial discrimination is a mere perception or a reality in Namibia. The hearings were preceded by a media campaign and posters were designed and displayed, informing citizens of the mandate, purpose and dates and venues of the public hearings.

The Mandate

To receive oral and written submissions relating to racism/racial discrimination including, but not limited to, the following:

- discrimination in the work place, appointments, promotions, etc.
- discrimination in implementing under study programmes and failure to comply with employment equity legislation

- racism in sport, culture and schools
- discrimination and discriminatory practices against farm workers

The Purpose

The purpose of the public hearings was to determine on which scale racism/racial discrimination was still practiced in Namibia.

The Panel

Adv J Walters (Ombudsman) Chairperson
Prof N Horn (Dean of the Faculty of Law; UNAM) Member
Ms Sampa Kangwa-Wilkie (MISA) Member
Ms Imba Van Wyk - Secretary

Despite the intensive preceding publicity campaign, only 22 people participated in the hearings and it is thus difficult to determine whether the exercise succeeded in its purpose, i.e. to determine on which scale racism/racial discrimination is still practiced in Namibia and to make citizens aware of the scourges of racism and racial discrimination and where to complain if one becomes a victim.

The apparent failure of the exercise will however not discourage us; and we will continue to raise awareness and in our national human rights action plan issues of racism/racial discrimination will be identified as well as suitable measure to address these issues.

Dates and Venues of the Hearings

The poster below was printed and widely distributed prior to the hearings.



OMBUDSMAN PUBLIC HEARINGS ON RACISM/ RACIAL DISCRIMINATION PERCEPTION OR REALITY IN NAMIBIA?

MANDATE:

To receive oral and written submissions relating to racism/racial discrimination including, but not limited to, the following:

- discrimination in the work place, appointments, promotions, etc.
- discrimination in implementing under study programmes and failure to comply with employment equity legislation;
- racism in sport, culture and schools
- discrimination and discriminatory practices against farm workers

PLEASE NOTE:

THE PURPOSE OF THE PUBLIC HEARINGS IS NOT TO INVESTIGATE INCIDENTS SUBMITTED TO THE HEARING PANEL, BUT TO DETERMINE ON WHICH SCALE RACISM/RACIAL DISCRIMINATION IS STILL PRACTISED IN NAMIBIA

Enquires: E Cline @ Tel No 2073231

**ARE YOU OR HAVE YOU BEEN A VICTIM OF
RACISM/RACIAL DISCRIMINATION? THEN THIS
PLATFORM IS FOR YOU!**

DATES AND VENUES OF HEARINGS

WINDHOEK:

09H00-18H00: THURSDAY 24 AND
FRIDAY 25 JULY 2008,
FRANCO NAMIBIA CULTURAL CENTRE

KATUTURA:

09H00-17H00 SATURDAY 26 JULY 2008,
KATUTURA COMMUNITY HALL

KEETMANSHOOP:

09H00-18H00 TUESDAY 5 AUGUST AND WEDNESDAY
6 AUGUST 2008
TOWN COUNCIL CHAMBERS

SWAKOPMUND:

09H00-18H00 TUESDAY 12 AUGUST 2008
SWAKOPMUND REGIONAL COURT

WALVIS BAY:

WEDNESDAY 13 AUGUST 2008
WALVIS BAY TOWN (SIDE) HALL

OSHAKATI:

09H00-18H00 FRIDAY 15 AUGUST AND
SATURDAY 16 AUGUST 2008
UNIVERSITY OF NAMIBIA, NORTHERN CAMPUS

Written submissions can be handed in at any of the hearings or
can be forwarded to:

Office of the Ombudsman
Private Bag 13211
WINDHOEK

or
Fax No (061)220550

or

E-mail: office@ombudsman.org.na

Constitution Day

The Office is traditionally involved in the celebration of Constitution Day and 2008 was no exception. The Ombudsman, in collaboration with the Konrad Adenauer Foundation, hosted a series of public lectures relating to human rights under the theme “The citizen’s right to Accountability and Transparency....giving a voice to the people of Namibia”; it was decided to coincide kicking off of the series with Constitution Day, with keynote address “The citizen’s right to a living Constitution”.

We were extremely fortunate to have Her Excellency Advocate Bience Gawanas, AU Commissioner for Social Affairs, as the keynote presenter on the occasion, which took place at Moringa Room in the Kalahari Sands Hotel on Thursday, 7 February 2008.

Another guest of honour at the occasion was the honourable Speaker, Dr Theo-Ben Gurirab, who did the closing remarks.



Public Lecture Series

The Office, in partnership with the Konrad Adenauer Foundation, embarked on a project to encourage debate on issues relating to the Namibian Constitution, ensuring that the Constitution remains a living document and providing citizens with a forum to voice their concerns relating to transparency and accountability issues.

The project entailed the monthly gathering of citizens from a wide sphere and all walks of life for public debates on different issues relating to the Namibian Constitution. Various experts from local and external ranks were approached to make presentations during these monthly meetings.

The following meetings in the series, attended by 300 people, took place:

6 March 2008:

The citizens' right to electricity

Expert speaker: Mr Paulinus Shilamba,
Managing Director of Nampower



3 April 2008:

The citizens' right to a living parliamentary democracy

Expert speakers: Hon Peya Mushelenga, MP;
Hon Johan de Waal, MP; Hon Nora Schimming-Chase, MP;
Hon Justus //Garoeb, MP



8 May 2008:

The citizens' right to information (freedom of the media)

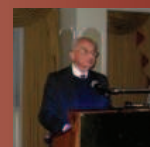
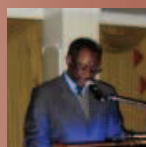
Expert speakers: Ms Sampa Kangwa-Wilkie (MISA);
Mr Chris Jacobie (Republikein); Mr Crispin Inambao (New Era);
Mr Eberhard Hofmann (Allgemeine Zeitung)



5 June 2008:

The citizens' right to effective public service delivery

Expert speakers: Mr Harold Pupkewitz
(MD, Pupkewitz Holdings);
Mr Tulinane Emvula (Member of the Public Service Commission)



Africa Public Service Day

The Office was involved with the arrangements and attended Africa Public Service Day which was celebrated on 23 June 2008; the theme for the 2008 celebration was "From Policy to Results-based Implementation". The event was a great success as can be seen below:



Regional Offices

Keetmanshoop

The regional office in Keetmanshoop is situated on the corner of 2nd Avenue and Sam Nujoma Drive. The regional office also secured office space for complaint intake clinics in Mari-ental at the Ministry of Lands and Nampol complex, in Luderitz at the Old German Hostel and at Karasburg at the Old Hospital premises. These visiting points were secured with the kind assistance of the various ministries.

Two vehicles, i.e. a Corsa bakkie and a Mazda 4 x 4 bakkie, are assigned were also assigned to the office and with the kind permission of the PK de Villiers High School, 2 lock up garages on the school premises were assigned to these vehicles ensuring that they are kept safe.

During the reporting period, staff members from the regional office served on the Namibian Police Public Relations Committee, the Hospital Advisory Committee and the Constituency Aids Coordinating Committee.

During 2008, 16 644 km's were travelled in the execution of complaint intake clinics and investigations; 21 visiting points were included in the intake programme (see full programme elsewhere in the report) from April 2008 – November 2008, with 47 actual visits, considering that some places were visited two or three times during the year.

Oshakati

The regional office in Oshakati is situated in the Magistrate's Court building in Main Street.

Two vehicles, i.e. a Corsa bakkie and a Mazda 4 x 4 bakkie, are assigned to this office and are parked on the premises of the Magistrate's Court. The lockable garage arrangement is unfortunately not really satisfactory because, although the doors of the parking spaces assigned to the office are locked, the vehicles can still be reached from the sides through other doors that are not kept locked.

During 2008, 34 210 km's were travelled in the execution of complaint intake clinics and investigations; 16 visiting points were included in the intake programme (see full programme elsewhere in the report) from April 2008 - November 2008, with 64 actual visits, considering that some places were visited two or three times during the year.

The maladministration complaints investigated by the office ranged from the unfair dismissal of a student nurse from a training course in Oshakati to the selling of one plot to two individuals in Ongwediva and Helao Nafidi. Complaints regarding the infringement of human rights ranged from the police shooting and injuring a man of Omungwelume to long periods of detention without appearing in court. A huge problem seemed to be the eviction of villagers from traditional lands by the newly proclaimed town councils without paying fair compensation. Something also worth mentioning, is the instrumental role which the office played in securing dignified burials for the San people in Okongo. Deceased members of this community were usually buried in plastic bags but, following our intervention, a 'dignified burial fund' was set up by the Council and is now assisting with the costs towards purchasing coffins.



A San burial

The benefits experienced with the opening of a regional office as well as the various complaint intake clinics are mainly the access given to the Office to the less fortunate citizens, who do not have the financial means to travel to Windhoek to see an investigator. In many instances matters are resolved right on the spot and in time because the complainant and the party complained against is in the same area.

Some of the most burning problems raised by the marginalized communities, like the San community at Okongo, are the policies governing the social benefits of orphans and vulnerable children. The policy that a child who lost one parent should be registered by the surviving parent is not compatible with the circumstances in which children are found in these communities. They are mostly in the care of their grandparents and in most instances after the death of the mother, the maternal grandparents are not aware of the whereabouts of the father of the child. It further happens that San children are placed under the care of Oshikwanyama speaking people after the death of their parents, and these caretakers have no idea regarding the family of the children. This results in effectively excluding these children from receiving any benefits. These complaints together with other similar matters regarding the social welfare of children in that specific area, are to receive special attention during 2009.

Complaint Intake Clinics

Programme: Windhoek Head Office: April - October 2008

TOWN	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	VENUE
REHOBOTH		9 (9-16h00)			8 (9-16h00)			Museum
OKAHANDJA			2 (9-15h00)				6 (9-15h00)	Magistrate's Court Bldg
OMARURU PRISON			3 (8-17h00)				7 (8-17h00)	Omaruru Prison
OMARURU			4 (8-13h00)				8 (8-13h00)	Magistrate's Court Building
WALVIS BAY PRISON	14(12-17h00)			14(12-17h00)			13(12-17h00)	Kuisebmond Mun Building
WALVIS BAY	15(8-15h00)			15(8-15h00)			14(8-15h00)	Walvis Bay Prison
HENTIES BAY	16(8-12h00)			16(8-12h00)			15(8-12h00)	Municipal Building
SWAKOP PRISON	16(14-17h00)			16(14-17h00)			15(14-17h00)	Swakopmund Prison
SWAKOPMUND	17(8-17h00)			17(8-17h00)			16(8-17h00)	Magistrate's Court Bldg
ARANDIS	18(9-1300)							Arandis Town Council Bldg
USAKOS				18(10-1300)				Magistrate's Court Bldg
KARIBIB							17(10-13h00)	Karibib Town Hall
OPUWO		13 (8-15h00)				16 (8-15h00)		Magistrate's Court Bldg
KAMANJAB		14 (8-15h00)				17 (8-15h00)		Constituency Office
KHORIXAS		15 (8-17h00)				18 (8-17h00)		Magistrate's Court Bldg
OUTJO	22 (12-17h00)			7 (12-17h00)			27 (12-17h00)	Otjozondjupa Regional Office
OTJIWARONGO	23 (9-17h00)			8 (9-17h00)			28 (9-17h00)	Magistrate Court
OKAKARARA	24 (10-13h00)			9 (10-13h00)			29 (10-13h00)	Magistrate's Court Bldg
GAM		19 (10-15h00)			4 (10-15h00)			Kambaz embi traditional authority
TSUMKWE		20 (8-17h00)			5 (8-17h00)			Ministry of Youth
AASVOELNES		21 (9-12h00)			6 (9-12h00)			Aasvoelnes Primary School
MANGETTI DUNE		21 (14-16h00)			6 (14-16h00)			Ministry of Lands and Resettlement
OMATAKO		22 (8-12h00)			7 (8-12h00)			Omatako Primary School
MAROELABOOM		22 (14-16h00)			7 (14-16h00)			Police station
GOBABIS			9 (10-17h00)			1 (10-17h00)		Epako Municipal Bldg
OTJINENE			10 (11-15h00)			2 (11-15h00)		Constituency Office
EPIKURO			11 (10-15h00)					Regional Office
PLESSISPLAAS						3 (10-15h00)		Police station
TALISMANIS			12 (11-15h00)					Constituency Office
AMINIUS						4 (11-15h00)		Constituency Office
GOBABIS PRISON			13 (8-13h00)			5 (8-13h00)		Gobabis Prison
DIVUNDU REHAB			23 (11-14h00)			22 (10-15h00)		Divundu Rehab Centre
SANGWALI			24 (10-13h00)					Sangwali Com School
KATIMA MULILO			25 (8-17h00)			29 (8-17h00)		Ministry of Labour
CHINCHIMANE			26 (14-16h00)					Teacher's Resource Centre
SIBINDA			27 (9-12h00)					Sibinda High School
NGOMA						23 (9-16h00)		Teacher's Resource Centre
SCHUKMANSBURG						24(10-15h00)		Schuk Combined School
KABBE						25 (9-13h00)		Constituency Office
BUKALO						25 (14-16h00)		Agricultural Office/hall
IMPALILA ISLAND						26 (10-15h00)		Impalila Combined School
KONGOLA							2 (9-12h00)	Constituency Office
WHK CENTRAL PRISON	11+25	9+23	13+27	11+25	15+29	12+26	10+24	Whk Central Prison

Programme: Regional Office South: April - November 2008

TOWN	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	VENUE
GIBEON	7 (10-16h00)						6 (10-16h00)		W M JOD SCHOOL HALL
MARIENTAL	8 (8-17h00)			7 (8-17h00)			7 (8-17h00)		OMBUDSMAN OFFICE, ERNST STUMPFE STR
MALTAHÖHE	9 (10-15h00)			8 (10-15h00)			8 (10-15h00)		MAGISTRATE'S OFFICE
STAMPRIET	10 (9-12h00)			9 (9-12h00)			9 (9-12h00)		COURTROOM POLICE STATION
ARANOS	10 (13-16h00)			9 (13-16h00)			9 (13-16h00)		MAGISTRATE'S OFFICE
GOCHAS				10 (10-15h00)					VILLAGE COUNCIL BOARD ROOM
HARDAP PRISON	11 (8-15h00)			11 (8-15h00)			10 (8-15h00)		HARDAP PRISON
AROAB		6 (10-15h00)				22 (10-15h00)			COURT ROOM POLICE STATION
KOËS		7 (10-15h00)				23 (10-15h00)			COURT ROOM POLICE STATION
BERSEBA		8 (10-13h00)				24 (10-13h00)			BERSEBA CONSTITUENCY OFFICE
TSES		8 (14-16h00)				24 (14-16h00)			VILLAGE COUNCIL HALL
BETHANIE		9 (10-15h00)				25 (10-15h00)			MAGISTRATE'S OFFICE
KARASBURG		19 (10-17h00)			18 (10-17h00)			17 (10-17h00)	OLD HOSPITAL PREMISES
ARIAMSVLEI		20 (10-15h00)						18 (10-15h00)	COURT ROOM POLICE STATION
WARMBAD		21 (10-15h00)			19 (10-15h00)				POLICE STATION OFFICE
NOORDOEWER					20 (10-15h00)			19 (10-15h00)	COURT ROOM POLICE STATION
LÜDERITZ			2 (8-13h00)					3 (8-13h00)	OLD GERMAN HOSTEL
LÜDERITZ PRISON			2 (14-17h00)					3 (14-17h00)	LÜDERITZ PRISON
AUS			3 (9-15h00)					4 (9-15h00)	COURTROOM POLICE STATION
ROSH PINAH			4 (8-15h00)					5 (8-15h00)	POLICE STATION OFFICE
ORANJEMUND			5 (8-17h00)					6 (8-17h00)	MAGISTRATE'S COURT

Programme: Regional Office North: April - November 2008

TOWN	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	VENUE
EENHANA		6(10-17h00)		1 (10-17h00)		1 (10-17h00)		3 (10-17h00)	MAGISTRATE COURT
EKOKA		7(10-16h00)		2 (10-16h00)		2 (10-16h00)		4 (10-16h00)	EKOKA PRIMARY SCHOOL
OKONGO		8 (8-13h00)		3 (8-13h00)		3 (8-13h00)		5 (8-13h00)	MIN OF GENDER EQUALITY AND CHILD WELFARE – HALL
OKAHAO		13 (10-15h00)		9 (10-15h00)		10 (10-15h00)		10 (10-15h00)	MAGISTRATE COURT
UUTAPI		14 (10-15h00)		10 (10-15h00)		11 (10-15h00)		11 (10-15h00)	MAGISTRATE COURT
RUACANA		15 (10-15h00)		15 (10-15h00)		12 (10-15h00)		12 (10-15h00)	MAGISTRATE COURT
ONDANGWA	28 (9-16h00)		4 (9-16h00)		7 (9-16h00)		6 (9-16h00)		MAGISTRATE COURT
OLUNO PRISON	29 (9-16h00)		5 (9-16h00)		8 (9-16h00)		7 (9-16h00)		OLUNO PRISON
OTAVI	7 (11-16h00)		9 (11-16h00)		11 (11-16h00)		13 (11-16h00)		MAGISTRATE COURT
GROOTFONTEIN PRISON	8 (8-13h00)		10 (8-13h00)		12 (8-13h00)		14 (8-13h00)		GROOTFONTEIN PRISON
GROOTFONTEIN	8 (14-17h00)		10 (14-17h00)		12 (14-17h00)		14 (14-17h00)		MINISTRY OF LABOUR
FARM SCOTT	9 (10-15h00)		11 (10-15h00)		13 (10-15h00)		15 (10-15h00)		FARM SCOTT PRISON
TSUMEB	10 (8-13h00)		2 (8-13h00)		14 (8-13h00)		16 (8-13h00)		MAGISTRATE COURT
RUNDU		20 (8-17h00)		22 (8-17h00)		23 (8-17h00)		18 (8-17h00)	MAGISTRATE COURT
NKURENKURU		21 (10-15h00)		23 (10-15h00)		24 (10-15h00)		19 (10-15h00)	REGIONAL COUNCIL OFFICE
ELIZABETH NEMPEMBA PRISON		22 (10-16h00)		24 (10-16h00)		25 (10-16h00)		20 (10-16h00)	ELIZABETH NEPEMBA PRISON



NOTES



Where to find us:

Windhoek, Private Bag 13211

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Email: office@ombudsman.org.na

Keetmanshoop, PO Box 890

Cnr of Second Street and Sam Nujoma Avenue

Tel: 063-221028

Fax: 063-221030

Oshakati, PO Box 5689

Magistrate's Court Building, Main Street

Tel: 065-224638

Fax: 065-224605