



THE OMBUDSMAN: NAMIBIA (NHRI)

Submission to the Committee Against Torture

Submitted on October 2016

INTRODUCTION

The Ombudsman: Namibia was established under Chapter 10 of the Namibian Constitution and the Ombudsman Act, No 7 of 1990. It is a multi function office, that is, classic Ombudsman with additional mandates. The mandates are the receiving and investigation of complaints relating to maladministration; violation of human rights and freedoms, misappropriation of public monies and misuse of property by officials and the protection of the environment. The office received a status "A" accreditation from the Global Alliance of National Human Rights Institutions (GANHRI) during April 2006 and retains its status "A" accreditation during the re-accreditation process in 2011. It is up for re-accreditation during November 2016.

The Ombudsman must credit the government for the enormous effort it has made to improve the human rights situation in Namibia. However, more needs to be done to ensure that the rights and freedoms guaranteed in our Constitution and the international instruments, ratified by Namibia, become a reality for all Namibians. The submission of the Ombudsman will emphasize key human rights issues that need to be addressed to give effect to constitutional guarantees.

INTERNATIONAL TREATY OBLIGATIONS

1. Ratification

Namibia has ratified nearly all core international and regional human rights instruments. However, government should be encouraged to ratify the outstanding instruments and to comply fully with its obligations under these instruments.

- 1.1** Namibia has ratified the Convention against Torture (CAT) but still needs to ratify the Optional Protocol to the Convention against Torture (OPCAT). In terms of CAT and OPCAT, Namibia needs to take legislative and other measures to criminalize torture and establish a National Preventative

Mechanism. The Ombudsman calls on Government to ratify OPCAT and to establish a national preventative mechanism.

2. Dissemination of Concluding Observations

Under the National Human Rights Action Plan, the Ombudsman is tasked with the dissemination of concluding observations and with monitoring the implementation thereof. The Ombudsman developed and printed a ***Compendium of International Human Rights Law for Parliamentarians***¹ which contains all the international, regional and sub-regional instruments ratified by Namibia, as well as the concluding observations of the treaty bodies; each member of parliament received a copy.

DOMESTIC HUMAN RIGHTS CONCERNS:

CRIMINALIZING TORTURE

The Law Reform and Development Commission has submitted a report and bill on ***The Prevention of Torture*** to the Minister of Justice. The bill defines and criminalizes torture and places the duty to investigate all instances of alleged torture on the Ombudsman. The Ombudsman calls on Government to expedite the adoption of the bill and to strengthen the capacity of the Ombudsman to comply with its duties under the new legislation.

PREVENTION OF TORTURE

Government must be commended for its support to the Ombudsman in his prevention of torture project during 2015, where a ***Training Manual for Police Officers on the Prevention of Torture***² was developed and used in the training of police officers in regard to the prohibition of torture. The Ombudsman calls on Government to strengthen its capacity to continuously raise the level of awareness among police officers, correctional officers, and military personnel on the prohibition of torture.

NATIONAL PREVENTATIVE MECHANISM

While government has not yet ratified OPCAT and has not designated a national preventative mechanism, the Ombudsman conducts periodic visits to places of deprivation of liberty in order to receive complaints from inmates, inspect facilities and prevent torture. The Ombudsman calls on Government to strengthen the capacity of the Ombudsman in order to conduct visits to places of deprivation of liberty more often.

CORRECTIONAL FACILITIES

Government must be commended for the improvements at and upgrading of existing prisons and police cells. However a serious concern is still the conditions under which detainees are kept and fed in some cells at police stations. The conditions do not comply with international standards and most cells are still overcrowded. The Ombudsman calls on government to establish up to date standards for these places of detention and to expedite the building of remand prisons for trial awaiting inmates in identified towns.

GENDER BASED VIOLENCE

The ever-increasing number of gender based violence cases, is a matter of grave concern. Despite the existence of the Combating of Domestic Violence Act, 2003 that provides protection and mechanisms to protect women and children, violence against them remains widespread. Legislation alone is not enough, it only deals with the consequences of such violence; more is needed. Tolerance education should be considered an urgent imperative. The Ombudsman calls on government to devote special attention to improving teacher training, curricula, content of textbooks, lessons, new educational technologies, with a view to educating caring and responsible citizens open to other cultures, able to appreciate the value of freedom, respect for human dignity and differences and able to prevent conflicts or resolve them by non-violent means in line with the Declaration of Principles on Tolerance. The Ombudsman also calls on government to review the Act and effectively implement its provisions.

The Ombudsman further calls on Government to establish a mechanism under which victims of gender based violence can apply for protection orders in towns and villages where there are no sitting magistrates, and under which they can apply for protection orders outside court hours and court days.

FAIR TRIAL RIGHTS

The administration of justice is subject to systemic problems of delay in courts whereby criminal cases may take years before coming to trial and judgments are unavailable for years in the High and Supreme Court. Unending postponements of criminal trials, sometimes longer than a year, in the lower courts add to the delays. The right to appeal or review is seriously affected through delays in producing the transcripts of trials and unduly delays in preparing the appeal/review records of

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

NATIONAL HUMAN RIGHTS ACTION PLAN

Government must be commended for the adoption of Namibia's first ***National Human Rights Action Plan (NHRAP)***³ and for mandating the Ombudsman to monitor the implementation plan. The NHRAP is comprehensive and contains achievable goals for the next 5 years under the following prioritized human rights areas of education, health, land, water and sanitation, housing, access to justice and the right not to be discriminated against. The Ombudsman calls on government's support; a successful implementation of the plan, will change the human rights landscape of Namibia and will bring it closer to the objective of human rights for all.

^{1 2 3} See: Ombudsman website: www.ombudsman.org.na