



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
10 June 2016

Original: English

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined thirteenth to fifteenth periodic reports of Namibia*

1. The Committee considered the combined thirteenth to fifteenth periodic reports of Namibia (CERD/C/NAM/13-15), submitted in one document, at its 2436th and 2437th meetings (see CERD/C/SR.2436 and 2437), held on 4 and 6 May 2016. At its 2446th meeting, held on 12 May 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined thirteenth to fifteenth periodic reports of the State party, which include responses to the concerns raised by the Committee in its previous concluding observations (CERD/C/NAM/CO/12) and new information on developments.

3. The Committee appreciates the open and constructive dialogue it had with the high-level delegation of the State party and the additional information provided orally and in writing by the delegation in response to the questions and issues raised by the Committee. The Committee further appreciates the efforts made by the State party to build a harmonious society and eliminate racial discrimination, which was institutionalized from colonial occupation.

B. Positive aspects

4. The Committee welcomes the following legislative and policy measures taken by the State party:

(a) Adoption of the Human Rights Action Plan (2015-2019), taking special note that the plan includes the right not to be discriminated against as one of the seven thematic focus areas;

(b) Provision of free universal primary education since 2014 and of free secondary education since January 2016;

* Adopted by the Committee at its eighty-ninth session (25 April-13 May 2016).



- (c) Establishment in 2015 of the new Ministry of Poverty Eradication and Social Welfare, tasked with increasing social grants;
- (d) Adoption of the National Strategic Framework for HIV and AIDS Response, in 2010;
- (e) Submission to Parliament of the white paper on indigenous peoples prepared by the Ombudsman with assistance from the International Labour Organization (ILO);
- (f) Establishment of three regional offices of the Ombudsman, making the Ombudsman more accessible to the general public.

C. Concerns and recommendations

Disaggregated statistical data

5. The Committee notes the provision of some statistical data in the common core document and in the State party report, in line with its previous recommendation. The Committee notes with concern, however, that the updated disaggregated data necessary to properly evaluate the situation of various groups (in particular indigenous peoples, national and ethnic minorities, refugees and asylum seekers) has not been provided in the report, limiting the Committee's ability to properly analyse the situation of such groups, including any potential progress achieved by implementing, through programmes, special measures for these groups (art. 1).

6. While noting the State party's desire to avoid societal divisiveness through the collection of data, the Committee refers the State party to its guidelines on reporting under the Convention (see CERD/C/2007/1, paras. 10-12), and recommends that the State party collect and provide in its next report updated and comprehensive statistical data on the demographic composition of the population and data disaggregated by ethnic group on the enjoyment of economic and social rights. Such data will provide the Committee and the State party with an empirical basis to evaluate the effectiveness with which the rights enshrined in the Convention are being implemented.

National human rights institution

7. While welcoming the increased resources assigned to the Office of the Ombudsman, the Committee reiterates its concern about the limited mandate given in the Ombudsman Act of 1990 and, in particular, about the fact that the mandate includes only the protection, not the promotion, of rights (art. 2).

8. The Committee recommends that the State party pursue its intention to revise the mandate of the Ombudsman, and encourages the inclusion of the promotion of rights. To this end, the Committee requests the State party to make the necessary amendments to the Ombudsman Act.

Definition of racial discrimination

9. The Committee reiterates its concern that the definition of racial discrimination in the Racial Discrimination Act of 1991 is still not in line with article 1 of the Convention. The Committee is also concerned that discriminatory provisions may still exist in some laws, including the customary laws of certain ethnic groups, which are also contrary to the rights enshrined in the Convention (arts. 1-2).

10. The Committee reiterates its recommendation to the State party that it bring its domestic law into line with the Convention, including in respect of the definition of

racial discrimination. While noting the work of the Law Reform and Development Commission, the Committee recommends that the State party review legislation that may allow for direct or indirect forms of discrimination and introduce revised legislation where necessary, in line with the Convention.

Racist hate speech

11. The Committee notes with concern that amendments to the 1998 Racial Discrimination Prohibition Amendment Act have not yet been finalized and adopted. The Committee notes that a court in Namibia has ruled on the issue of racial comments in *Kauesa v. Minister of Home Affairs* (1995), defining hate speech as “speech inciting hatred and prejudice on the grounds of race, colour, ethnic origin, creed or religion”. The Committee highlights that descent as a ground for inciting hate and prejudice is missing from this definition (art. 4).

12. The Committee recalls its general recommendations No. 7 (1985) relating to the implementation of article 4 and No. 15 (1993) on article 4 of the Convention, in which it stressed that the provisions of article 4 are of a mandatory character. The Committee reiterates its previous recommendation, and further refers the State party to its general recommendation No. 35 (2013) on combating racist hate speech. The Committee recommends that the State party ensure that the definition of hate speech, as revised in the amended Act, is fully in line with article 4 and that it includes all groups recognized in article 1 of the Convention.

Special measures

13. The Committee notes the special measures implemented by the State party, including the Affirmative Action (Employment) Act 1998 and the Agricultural (Commercial) Land Reform Act 1995, to advance the rights of “previously disadvantaged people”. It observes, however, that special measures are limited to certain areas and underlines the absence of comprehensive and updated information in the State party report on legislation and policy measures that address discrimination in the context of efforts to realize other economic, social and cultural rights, and on the impact of those measures (arts. 2 (2) and 5 (c)).

14. The Committee encourages the State party to consult affected communities to obtain information on the effectiveness of current special measures. The Committee recommends that, on the basis of those findings, the State party extend its implementation of special measures to address additional priority areas, as well as those already included, with the active participation of affected communities, in accordance with articles 1 (4) and 2 (2) of the Convention and with its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

Indigenous peoples

15. While noting the measures, including development programmes, taken by the State party to improve the situation of indigenous peoples, the Committee expresses concern at the continued high rate of poverty and the challenging economic and social situation of indigenous peoples, which face obstacles in accessing education, housing, employment, health care (including treatment for HIV/AIDS), ownership of ancestral lands and political representation (arts. 3 and 5).

16. The Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples and recommends the involvement of indigenous communities in the planning, implementation and review of development programmes aimed at

improving their situation. The Committee also recommends that the State party monitor the impact on the enjoyment of rights by indigenous peoples of measures taken and update the Committee on the effectiveness of those measures and on the work of the Division of Marginalized Communities. The Committee further recommends that the State party implement the recommendations made by the Special Rapporteur on the rights of indigenous peoples following his visit to Namibia in 2012 (see A/HRC/24/41/Add.1).

Violence against San women

17. The Committee notes the information provided by the State party on the rape of San women, which has an ethnic dimension, in the State party report, but regrets that the information on preventing such acts and bringing perpetrators to justice is not recent or comprehensive. The Committee is concerned by possible obstacles faced by San women in accessing proper mechanisms for reporting violations and achieving judicial redress for these crimes, which may lead to low reporting of such incidents and prevent the prosecution of perpetrators (art. 5 (b)).

18. **Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee requests the State party to provide detailed information in its next periodic report on cases of rape of San women, including statistical data on the number of cases reported, prosecutions and convictions. The Committee also requests information on efforts taken by the State party to combat negative stereotypes about indigenous peoples, as previously recommended, as well as efforts taken by the State party to raise awareness among indigenous peoples of mechanisms for reporting and gaining access to judicial recourse for violations of their rights.**

Political participation of indigenous peoples

19. The Committee, while noting that the State party has recognized 50 traditional authorities, including five San indigenous groups, under the Traditional Authorities Act No. 25 of 2000, remains concerned that there are other indigenous peoples that have not been included in this process, and may not have the ability to participate fully in political processes and may face exclusion from decision-making in matters that concern them (arts. 2 and 5).

20. **Bearing in mind article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recalls the importance of ensuring the effective participation of all groups in political and public life, as well as in all public institutions, including the parliament, the public administration, the police and the judiciary. The Committee recommends that the State party take measures to ensure a revised system for the effective and inclusive participation of all indigenous peoples in public affairs at all levels, including individuals belonging to indigenous groups without traditional authorities. The Committee requests the State party to provide information in its next periodic report on the effective and inclusive participation of indigenous peoples in political and public life at all levels.**

Access to education

21. The Committee welcomes the measures taken by the State party to overcome educational inequality and to increase access to education for ethnic minorities and indigenous peoples through the extension of free education to the secondary level, the school feeding programme, mobile school units and other measures. The Committee notes with concern, however, the continued challenges faced by these groups in obtaining quality education. In particular, it notes the following:

- (a) Information indicating that the mobile school units are not properly resourced with teachers and materials;
- (b) Information indicating that indigenous native attire is only allowed until level six and instruction in mother tongues is provided only until level three;
- (c) Lack of updated information on drop-out rates among ethnic minority and indigenous children;
- (d) Lack of information on educational outreach programmes for children from ethnic minorities and indigenous peoples, in particular those living in informal settlements, on communal farms, in rural areas and in the refugee settlement (art. 5 (e)).

22. The Committee recommends that the State party guarantee for all children access to all levels of education, without discrimination. In particular, it recommends that the State party:

- (a) Continue to develop the mobile school unit programme and allocate the resources necessary to its proper functioning. Monitor the impact of the units on the enjoyment of the right to education and provide updated information to the Committee in its next periodic report on progress made;**
- (b) Continue to take the steps necessary to adapt educational programmes to indigenous ways of life and cultures and to address special needs, including in regard to dress and language, in consultation with the communities involved;**
- (c) Address the root causes of why young people drop out of school and provide updated information on efforts made to address this concern and on the current status of school drop-out rates;**
- (d) Strengthen educational outreach programmes targeted at ethnic minorities and indigenous peoples with the goal of increasing educational enrolment and matriculation, and allocate the resources necessary to ensure a quality education.**

Land reform and resettlement

23. The Committee notes the challenges in remedying skewed land ownership patterns from the colonial past and appreciates the update on the resettlement of persons from “previously disadvantaged communities”. The Committee remains concerned that all ancestral indigenous lands remain under State ownership and that indigenous peoples continue to face challenges in owning, developing and controlling communal lands. The Committee is also concerned about the limited consultation with indigenous peoples regarding extraction activities carried out on or near their ancestral lands (art. 5).

24. In the light of its general recommendation No. 23, the Committee recommends that the State party work with indigenous peoples on titling their ancestral lands and securing their rights to those lands. The State party should also seek the informed consent of indigenous groups prior to granting licences to extractive industries. The Committee requests the State party to provide an update in its next periodic report on the recognition of ownership by indigenous peoples over the lands that they traditionally occupy or have occupied.

Complaints of racial discrimination and remedies

25. The Committee notes that four cases of racial discrimination have been reported to the Office of the Ombudsman since 2008 and expresses concern at the lack of other complaints submitted to other competent bodies (art. 2).

26. The Committee recalls that, in line with its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the lack of complaints or legal actions for racial discrimination does not mean the absence of racial discrimination in a State party. The absence of complaints may instead signify the victims' lack of familiarity with available judicial recourse, a lack of trust in the legal system or fear of reprisals. The Committee recommends that the State party intensify its efforts to inform the general public about racial discrimination and available legal and judicial recourse. The Committee requests the State party to include in its next periodic report information on the steps taken in this regard, including statistical data on complaints filed to all competent authorities and their outcomes.

Non-citizens

27. While noting the State party's reservation to article 26 of the 1951 Convention relating to the Status of Refugees, the Committee remains concerned about the restrictions placed on the freedom of movement of asylum seekers and refugees in the Osire refugee settlement. The Committee notes with concern the lack of updated information provided by the State party on the ability of refugees, asylum seekers and migrants to access basic services. It further notes the absence of information about the situation of undocumented migrants (art. 5).

28. The Committee requests updated information on the measures taken by the State party to ensure that non-citizens, including asylum seekers and refugees, have full access to services such as health care, housing, education and employment, as well as to identity documents. The Committee encourages the State party to accede to core regional instruments facilitating the fulfilment of the Convention, such as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa. Recalling article 1 (2) and (3) of the Convention, as well as general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee also requests information relating to the extent to which domestic law provides for differential treatment based on citizenship or migrant status.

D. Other recommendations

Ratification of other instruments

29. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the ILO Domestic Workers Convention, 2011 (No. 189).

Follow-up to the Durban Declaration and Programme of Action

30. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review

Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

31. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next periodic report specific information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

32. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Amendment to article 8 of the Convention

33. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Declaration under article 14 of the Convention

34. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual communications.

Follow-up to the present concluding observations

35. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 8 and 16 above.

Paragraphs of particular importance

36. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 6, 14, 22 and 24 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

37. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

38. The Committee recommends that the State party submit its combined sixteenth to eighteenth periodic reports, as a single document, by 11 December 2019, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
