



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2997th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 16 August 2023, at 3 p.m.

Chair: Ms. Shepherd

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined sixteenth to eighteenth periodic reports of Namibia (CERD/C/NAM/16-18; CERD/C/NAM/Q/16-18)

1. *At the invitation of the Chair, the delegation of Namibia joined the meeting.*
2. **Mr. Mbandeka** (Namibia), introducing his country's combined sixteenth to eighteenth period reports (CERD/C/NAM/16-18), said that consultations on the reports had been conducted with diverse stakeholders, including non-governmental organizations (NGOs), and their input had been incorporated into the report. According to an inter-census demographic survey conducted in 2016, Namibia had a population of 2,324,388 people, of whom 14 per cent were under 5 years of age, 23 per cent belonged to the 5 to 14 age group, 57 per cent belonged to the 15 to 59 age group, and 6 per cent were aged 60 years or over. National demographic statistics were not disaggregated by ethnicity. However, it was known that 3 per cent of the population comprised individuals who were not Namibian nationals. The Government recognized the importance of data for identifying and analysing inequalities, but it faced serious challenges with regard to data collection, storage and management. It therefore relied upon assistance from United Nations agencies in compiling data on poverty and other indicators.
3. All black Namibians were considered Indigenous Peoples, and specific policies had been designed to support Indigenous communities classified as marginalized, such as the San, Ovaherero and Ovambo communities. The Government had accepted a request from the Special Rapporteur on the rights of Indigenous Peoples for a visit in October 2023.
4. On achieving independence, following a brutal history of colonialism, genocide, racism and apartheid, Namibia had adopted a national reconciliation policy based on recognition of the inherent dignity and the equal and inalienable rights of all human beings. Those rights were recognized in the Constitution. Its article 10 enshrined the right to non-discrimination and equality, while article 23 explicitly prohibited racial discrimination and apartheid. The Racial Discrimination Prohibition Act of 1991 criminalized acts of racial discrimination, apartheid and incitement to racial disharmony and victimization. Reported cases of racial discrimination were investigated and prosecuted in the courts under that Act. According to the Office of the Prosecutor-General, two cases of racial discrimination recorded in 2020 were pending before the courts, four cases recorded in 2021 were pending, one case recorded in 2022 was under consideration for a prosecutorial decision and a second case was currently at the pretrial stage.
5. Policy and legislative reforms had been implemented with a view to countering racism and prohibiting discriminatory practices based on race, ethnic origin or colour. The 2022 Repeal of Obsolete Laws Act, which repealed laws and practices from the apartheid era, had entered into force in January 2023.
6. Namibia had the highest rating of any African country in the World Press Freedom Index of 2023 and was ranked twenty-second in the world. The authorities were addressing discriminatory practices on the Internet, while maintaining a balance between freedom of expression and the right to privacy. The Government was currently developing a cybersecurity policy, finalizing a bill on cybercrime and operationalizing the Access to Information Act. A bill on combating discrimination, discriminatory harassment and hate speech, spearheaded by the Office of the Ombudsman, had been drafted and would be submitted in due course to the Cabinet Committee on Legislation. Namibia remained fully committed to the implementation of the Durban Declaration and Programme of Action and to promotion of the rights of Africans and people of African descent.
7. Although progress had been made in reducing social and economic inequality, gaps persisted. Historical biases and imbalances continued to have a negative impact on various segments of society in terms of income, wealth distribution and available opportunities. The Government was actively promoting employment and investment and combating impediments to development, such as corruption. Almost half of the country's budget was

allocated to social sector priorities. The Social Protection Policy (2021–2030) was designed to ensure an adequate standard of living for the most vulnerable groups. Grants were provided to vulnerable children, persons with disabilities and older persons. Assistance was also provided in the form of food parcels and drought relief assistance.

8. Article 23 of the Constitution and the Affirmative Action Act of 1998 promoted fair employment practices and equitable remuneration for disadvantaged people, particularly racially disadvantaged people, women, persons with disabilities and members of marginalized communities. Entities with 10 or more staff members were required to submit an affirmative action report. The Namibia Integrated Employment Information System assisted jobseekers in finding suitable employment, and paid internship programmes provided students and graduates with work experience.

9. Education was seen as an effective tool for fostering tolerance, respect for diversity and respect for all persons' inherent dignity and human rights. Mobile schools existed for marginalized groups such as the San, Ovaherero and Ovambo nomadic communities. The education policy prohibited segregation in terms of school enrolment and sought to ensure that the education system was inclusive, sensitive and responsive to the needs of all children, particularly those likely to be educationally marginalized, including foreign nationals and refugees.

10. The Constitution established a duty to preserve the natural environment and maintain natural ecosystems for the benefit of present and future generations. Laws and policies were in place to ensure sustainable development and full respect for the rights of communities affected by development projects, particularly marginalized communities.

11. Namibians had been forcefully removed from their ancestral land during the colonial period, and descendants of white settlers, including absentee landlords, continued to occupy land. The unequal distribution and ownership of land continued to be a sociopolitical issue. Land reform policies and legislation concerning land ownership and distribution were being implemented, and considerable progress had been made in providing land to the marginalized communities. A commission of inquiry into claims of ancestral land rights and restitution was working to identify restorative and economic empowerment measures for affected communities. An affirmative action loan scheme enabled farmers from disadvantaged communities to acquire farms in commercial areas. The San communities of Otjomuise and Epukiro had been provided with 2,600 hectares of land in the Omaheke region during the 2015/16 financial year.

12. Germany had waged a war in 1904 that had annihilated a large portion of the Indigenous population. In 2021, Namibia and Germany had signed a joint declaration on acknowledgment of genocide and atonement for historical atrocities committed against the Namibian people. Members of the affected communities of the Ovaherero and Nama Peoples continued to be involved in the ongoing negotiations on issues such as reparations and the implementation of relevant projects and activities.

13. With regard to statelessness, amendments to the 1990 Namibian Citizenship Act and the 1999 Namibia Refugees (Recognition and Control) Act were required to address the issue. The Government had drafted a bill on regularization of the status of certain residents of Namibia and their descendants, a bill on statelessness determination and protection, and a bill on civil registration and identification.

14. **Ms. McDougall** (Country Rapporteur), recalling that, in its previous concluding observations ([CERD/C/NAM/CO/13-15](#)), the Committee had requested the State party to bring the definition of racial discrimination in the Racial Discrimination Act of 1991 into line with the Convention, said that she would like to know whether steps had been taken to amend the Act and whether civil society organizations had been consulted. With regard to the Repeal of Obsolete Laws Act, she wondered whether there were pre-independence laws that had not yet been declared obsolete and repealed. If so, which laws remained in force?

15. She would appreciate information on cases or complaints in which the Convention had been invoked before or applied by national courts, including the number of cases or complaints claiming violations of the Racial Discrimination Prohibition Act and their outcome. She noted that a number of recent cases had been mentioned in the opening

statement, but wondered why there had been so few outcomes to date. She was interested in hearing about measures taken to raise awareness of the Convention among judges, prosecutors and judicial officials, and initiatives aimed at raising awareness among the general public of their rights under the Racial Discrimination Prohibition Act and the Convention and their right of access to justice.

16. Access to justice was reportedly limited by inadequate funding for the Directorate of Legal Aid of the Ministry of Justice, limited geographical access to courts, language and cultural difficulties, a shortage of trained judges, prosecutors and magistrates and excessive filing fees. She would like to hear what initiatives, in addition to requests for donor funding, had been taken to expand access to justice, particularly for those whose rights to racial equality had been violated.

17. She wished to know what steps had been taken to implement the Committee's previous recommendation concerning the enactment of a law against hate speech that prescribed specific criminal sanctions. It was her understanding that it was hard to hold persons who engaged in hate speech accountable because the Racial Discrimination Prohibition Act of 1991 made an exception for persons inciting racial disharmony if their actions were deemed to be in the public interest or if there were reasonable grounds to believe that the statements concerned were true. She wished to know how many cases had been filed regarding incidents of hate speech or incitement of hatred and how many had resulted in a conviction or a finding that supported the complainant.

18. The Committee had received reports that the Law Reform and Development Commission was not operational, which was impeding the implementation of certain laws. She would like to know which laws had been affected and were still awaiting implementation despite having been adopted. She would like the delegation to provide an update on the status of the bill on combating of discrimination, discriminatory harassment and hate speech, including the timeline for its adoption. She wondered what steps the State party had taken to follow up complaints brought to the Office of the Ombudsman concerning hate speech, incitement to hatred and hate crimes, including those brought by black people. Specifically, she would like to know whether investigations had been conducted by the competent authorities and what the outcomes had been. She would appreciate information on the resources provided by the State party to support the Media Ombudsman, who was responsible for investigating hate speech, crimes, and incitement in the media. It would be useful to learn how many enforcement measures the Media Ombudsman had taken, their outcomes and the related circumstances. The delegation was invited to outline the steps taken to combat the use of racist language, such as the term "kaffir", in sports and other environments. Had steps been taken in that regard by bodies such as the Namibia Rugby Union?

19. She would like to know whether the complaint submitted to the Office of the Ombudsman regarding the tendency of the Namibian Police Force to stop and search vehicles of non-white Namibians, but not of white Namibians, had been investigated. If so, by which office and what had the outcome of the investigation been? She wished to know what measures had been taken to effectively prevent and protect individuals from racial profiling by law enforcement officers; what laws were applicable in that area; whether perpetrators were subject to administrative disciplinary procedures; how many complaints had been lodged with the police, the Office of the Ombudsman, prosecutors and the courts; whether investigations were always carried out after complaints were lodged; whether such investigations were conducted by an independent body; and what the outcomes of any investigations had been, with data disaggregated by racial or language groups.

20. **Ms. Ali Al-Misnad** (Country Task Force) said that she would be grateful if the delegation would provide information regarding action taken to address complaints relating to racism and racial discrimination lodged with the Office of the Ombudsman; the kind of assistance that the Office of the Ombudsman could provide to victims; any education and awareness-raising initiatives led by the Office of the Ombudsman to inform disadvantaged groups of their rights under the Convention and the Constitution and the services that the Office of the Ombudsman provided; and information on any training led by the Office of the Ombudsman for judges, prosecutors and judicial officials. She would also welcome an update on the status of the ombudsman bill, including which civil society organizations had been consulted throughout the process. She wondered whether the legislation being prepared by

the Government was based on the draft proposed by the Office of the Ombudsman and whether it included provisions that would guarantee the independence of the Office of the Ombudsman, formalize the appointment process and ensure adequate human and financial resources. She also wished to learn whether any concrete measures had been taken to follow up the recent inquiry of the Office of the Ombudsman entitled “A nation divided: Why do racism and other forms of discrimination persist after twenty-seven years of Namibian independence?”.

21. In its periodic report, the State party had provided data on workforce profiles disaggregated by “racially advantaged” and “racially disadvantaged”. She would be grateful if the delegation would define those terms. It would be useful to know how many racially disadvantaged people there were in the State party and what percentage of the total population they constituted. It would also be useful to know the total number of employed persons and the percentages that were racially advantaged and racially disadvantaged persons. According to the periodic report, a much higher proportion of racially disadvantaged people worked in semi-skilled and unskilled jobs than racially advantaged people. What might account for that difference? Was it related to education?

22. She would like the delegation to indicate which NGOs had been consulted and had provided information and data during the preparation of the periodic report. She also wished to know which socioeconomic indicators would be included in the upcoming national population census and how data would be disaggregated.

23. She wondered whether the State party had taken any steps in response to the complaint lodged with the Office of the Ombudsman concerning the overrepresentation of Awaambo people among diplomats deployed to Namibian missions. Statistics would be welcome on the number of persons from different language groups and Indigenous Peoples in senior government positions. She would like the delegation to outline the measures taken to ensure the adequate political representation of people from all communities at all levels of Government and decision-making; to ensure that persons from groups distinguishable by their race, colour, descent or language exercised their voting rights during elections; and to register and educate voters ahead of elections.

24. She would welcome further details on the implementation of the white paper on Indigenous Peoples drafted by the Office of the Ombudsman and the steps taken to guarantee the inclusion of all Indigenous Peoples. Some Indigenous communities, such as the Rehoboth Baster community, had been excluded from recognition under the Traditional Authorities Act No. 25 of 2000, which limited their ability to participate in the political process. She wondered what steps had been taken to expand recognition of community-appointed traditional authorities and enhance their role. What mechanisms existed to ensure that communities potentially affected by development projects were consulted with a view to obtaining their free, prior and informed consent?

25. **Mr. Kut** (Follow-up Coordinator), noting that the State party had not submitted a follow-up report to the Committee’s 2016 concluding observations ([CERD/C/NAM/CO/13-15](#)), said that he would like more concrete information on the ongoing process of amending the Ombudsman Act. He also wished to know more about the impact of the measures taken to foster Indigenous People’s enjoyment of their rights. It would also be useful to know whether efforts had been made to implement the 2013 recommendations made by the Special Rapporteur on the rights of Indigenous Peoples.

26. **Mr. Diaby** said that he would like to know whether the State party was planning to bring its legislation into line with article 1 of the Convention by reforming the Racial Discrimination Prohibition Act of 1991 to include all prohibited forms of discrimination. Some communities in the State party had lost their lands during periods of colonization, and he wondered whether the State party might introduce legislation to rectify that situation. He was surprised that a representative of the Office of the Ombudsman, the national human rights institution, was not present for the dialogue with the Committee and wondered whether the Office had the necessary resources to fulfil its mandate. With regard to the declaration signed with Germany, he wondered whether the amount of money offered by the German Government to the State party as reparation for the Herero and Nama genocide was considered sufficient. It would also be interesting to know whether the State party itself was

considering providing reparations to those communities and establishing a national day of remembrance of the genocide and other atrocities committed in the country. Lastly, he wished to gain a greater understanding of which laws were applicable in the case of harmful cultural practices, such as the persecution of persons with albinism.

27. **Ms. Tlakula** said that she would like to know whether the cybersecurity policy and the cybercrime bill would address hate speech on digital platforms, including in cases in which it was hard to identify the perpetrator. She would appreciate further details regarding the process for the appointment of the Ombudsman, the Ombudsman's term of office and whether an Ombudsman could recruit his or her own staff. The Committee had received reports of extremely low representation of the San community in Parliament and regional councils. She would like to know if that was still the case and whether measures had been taken to increase the parliamentary representation of minorities.

28. **Mr. Yeung Sik Yuen** said that he would like to gain a greater understanding of the roles of the Minister of Justice and the Attorney-General in the State party and whether they overlapped. He noted that the State party had reported very few cases of racial discrimination and none in which a decision had been taken. He wondered whether decisions had now been taken in any of those cases. He was curious to know why the statistics included a case that was awaiting a decision by the Prosecutor-General regarding whether or not to prosecute. One case had been described as "before the courts at the pretrial stage"; he would appreciate an explanation of what that meant.

29. **Mr. Guissé**, referring to the Ombudsman's report entitled "A nation divided: Why do racism and other forms of discrimination still persist after twenty-seven years of Namibian independence", said that he would like to know in what sense the nation was divided. The delegation was invited to provide more information on that report and to indicate whether there was a related action plan.

The meeting was suspended at 4.20 p.m. and resumed at 4.40 p.m.

30. **Mr. Mbandeka** (Namibia) said that it was no longer possible simultaneously to hold the posts of Attorney-General and Minister of Justice. As provided for in the Constitution, the Office of the Attorney-General was primarily responsible for providing legal advice to the Government and the President. Although the Office cooperated with the Ministry of Justice in certain matters, such as drafting legislation, it operated independently. The Office of the Prosecutor-General, while under the aegis of the Office of the Attorney-General, also operated independently.

31. The Government used the expressions "racially advantaged" and "racially disadvantaged" to draw a distinction between those persons who had benefited from apartheid and those who had not. It was on the basis of that distinction that the Government continued to design policies and measures to restore equality.

32. **Ms. McDougall** said that the State party appeared to use the terms "marginalized" and "Indigenous" interchangeably in its report. If those terms were synonymous, she wondered how the State party distinguished non-Indigenous persons who were marginalized.

33. **Mr. Mbandeka** (Namibia) said that the Division of Disability Affairs and Marginalized Communities within the Ministry of Gender Equality, Poverty Eradication and Social Welfare took steps to identify all marginalized population groups and implemented policies to improve their situation, including their access to education and land. That process was ongoing, and it was difficult to say how long it might take to reach all marginalized groups.

34. **A representative of Namibia** said that article 144 of the Constitution provided that all international legal instruments that were binding on Namibia formed part of Namibian law. On that basis, the courts had cited the Convention and other treaties in a number of decisions. Laws that contained outmoded and discriminatory language had been repealed and replaced.

35. Under the Legal Aid Act, legal assistance was provided to those persons who could not afford private counsel in both civil and criminal proceedings. In addition, the Ministry of Justice, in cooperation with the Law Society of Namibia, regularly organized free legal

advice days. Funding for the Office of the Judiciary had been increased and lower courts had been established throughout the country to improve access to justice. Some of those courts were administered in cooperation with local communities.

36. **A representative of Namibia** said that the white paper on the rights of Indigenous Peoples had been drafted with extensive input from stakeholders. In the first half of 2022, on the basis of the paper, the Ministry of Gender Equality, Poverty Eradication and Social Welfare had conducted an analysis of the situation and livelihoods of Indigenous Peoples and had issued a series of recommendations. Parliament was shortly due to consider the draft paper and the analysis, which would serve as input to related policies. Furthermore, the Employment Equity Commission within the Ministry of Labour, Industrial Relations and Employment Creation had drawn on the white paper to strengthen measures aimed at promoting the employment of persons from marginalized communities.

37. Consideration of the bill on combating discrimination, discriminatory harassment and hate speech had been delayed pending the appointment of additional commissioners to the Law Reform and Development Commission. By the end of 2023, the Commission should be in a position to prepare the bill for public consultation. Traditional authorities appointed by the Rehoboth Baster community could apply for official recognition under the Traditional Authorities Act. Applications were assessed against the requirements set out in the Act.

38. The Ombudsman bill was due to be discussed by parliament at its next session, beginning in September 2023. The bill contained provisions aimed at strengthening the independence of the Office of the Ombudsman, providing it with an executive director, an accounting officer and a separate budget for its activities, which included outreach programmes and visits to correctional facilities and homes for vulnerable persons.

39. **Mr. Mbandeka** (Namibia) said that the Ombudsman was appointed by the President on the basis of a recommendation by the Judicial Service Commission, which was composed of the Chief Justice, the Deputy Chief Justice, the Attorney-General and two members of the legal profession. In practice, the Executive did not interfere in the appointment of the Ombudsman; the President had never rejected the Commission's recommendation.

40. The Electoral Commission of Namibia regularly took measures to raise awareness of the right to vote and had also taken steps to provide persons in remote areas with the documentation they needed in order to register to vote. The Electoral Act was currently being amended to allow persons to register to vote even where they could not provide proof of identification. Political parties also educated the public on the right to vote.

41. The Traditional Authorities Act permitted traditional groups, including the Rehoboth Baster community, to freely appoint their own leaders. Once the community had selected a new leader, the community needed to submit an application to the Ministry of Traditional Affairs, which would ensure that the appointment was lawful. The new leader would then be approved. If the community could not agree on whom to appoint, the Ministry could assign a team to study the traditions of the community and produce a report containing a recommendation for the appointment. The Government's policy was not to interfere in the internal affairs of traditional communities.

42. In addition to a basic induction, members of the judiciary received targeted training on specific issues relating to human rights, including the application of the Convention. Presiding officers, judges and prosecutors sometimes received such training together, although some individuals had argued that such an approach undermined the independence of those different roles. Law enforcement officers also receive training on human rights.

43. **A representative of Namibia** said that the Division of Disability Affairs and Marginalized Communities within the Ministry of Gender Equality, Poverty Eradication and Social Welfare had been renamed to reflect the inclusion of a wider range of marginalized communities. The aim of the Division was to support the social and economic integration of the San, Ovaherero and Ovambo communities through programmes to raise awareness of their rights, provide educational support and improve livelihoods.

44. Namibia had a national database for tracking recommendations received from human rights treaty bodies. The Government used the data to develop viable policies with specific time frames that aligned with domestic laws and with national sustainable development goals.

From September 2023, the Government planned to conduct a series of roadshows in rural areas, in cooperation with civil society and the United Nations Development Programme, with the aim of informing traditional communities about their rights and about the avenues available to them in the event that those rights were violated.

45. **A representative of Namibia** said that the Government was of the view that the Prohibition of Racial Discrimination Act covered the topic of racial discrimination sufficiently. It would, however, give earnest consideration to the Committee's recommendations regarding the amendment of the Act. With regard to direct and indirect discrimination, the Government believed that, by leaving those terms undefined, the existing legislative provisions could be incorporated more broadly and flexibly in response to future developments in ways that racial discrimination might be manifested.

46. The Law Reform and Development Commission was currently examining the bill on hate speech presented by the Ombudsperson. The Commission had been mandated to consult widely on the bill. Given the complexity of the subject, however, those consultations had taken longer than expected. The Government was keen to finalize the bill as soon as possible. The Electronic Transactions Act (Act No. 4 of 2019) prohibited online hate speech and, in addition to the Communications Act, placed an obligation on service providers to continually monitor online content and remove all instances of hate speech. In addition, the Broadcasting Code set out principles to ensure that all broadcast content complied with the law. Bills on data protection and other related areas were in the pipeline.

47. **Ms. Ali Al-Misnad** said that she noted that the 2011 population census had included statistics on the number of at-home speakers of three languages. She wondered why those three languages had been selected and whether they reflected tribal or ethnic groupings. The Ombudsman had reported that the National Human Rights Action Plan failed to tackle racism and discrimination sufficiently. She wished to know what policies had been adopted to combat racism in the light of those findings.

48. **Mr. Mbandeka** (Namibia) said that, given the country's history, caution was taken when gathering data on ethnicity or tribal affiliation, as many persons feared that such information could be used against them. The provision of data on one's ethnic or tribal origins was therefore voluntary, which meant that consistent data on those categories could not be provided. In 2011, the Government had sought data on the number of speakers of the three languages so that it could plan appropriate cultural activities, such as radio programmes. While English had been adopted as the sole official language as a means of uniting the population, the Government was aware that efforts were needed to develop the languages used by the various ethnic groups in the country.

49. **Ms. Tlakula** said that she wished to know whether, in the development of the cybercrime bill, the Government had considered the emergence of new technologies such as generative artificial intelligence and their potential impact on racist hate speech.

50. **Ms. Esseneme** said that it would be interesting to learn what the criteria were for receiving legal aid and what legal aid encompassed. It was her understanding that Namibia had two supreme courts, one in the north of the country and one in the south. She wondered why two supreme courts had been established and how the system worked in practice.

51. **Mr. Diaby** said that, as victims had recourse to both traditional and common law courts, he would like to know which courts had jurisdiction in the event of a conflict of authority. In addition, in the light of the reported overuse of police force, he wondered whether the Government was considering adopting a law to protect human rights defenders.

52. **Mr. Guissé** asked why, despite the Government's various efforts, minority groups continued to face discrimination in public life.

53. **Mr. Mbandeka** (Namibia) said that, given the complexity of the subject matter and the relentlessness of technological development, the Government had taken a long time to develop its cybercrime bill. While the law would always lag behind technological development, the Government believed that the bill was ready to present to Parliament and expected that the amended the legislation, once adopted, would take into account any future developments.

54. The court system in Namibia had three tiers: lower courts, the High Court and the Supreme Court, the latter of which was the ultimate judicial authority. Given the physical size of the country, two circuits of the High Court had been established in different locations so that complainants did not have to travel as far to access justice. Efforts were being made to bring justice even closer to the people, including by providing mobile court services in remote areas. He did not know why the Ombudsman had been unable to join the meeting, but he would be willing to transmit any of the Committee's questions to the Ombudsman.

The meeting rose at 6 p.m.