



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

Distr.: General
22 September 2008
English
Original: French

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-third session

SUMMARY RECORD OF THE 1879th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 30 July 2008, at 10 a.m.

Chairperson: Ms. DAH

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (*continued*)

Eighth to twelfth periodic reports of Namibia (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (agenda item 4) (*continued*)

Eighth to twelfth periodic reports of Namibia (CERD/C/NAM/12; list of issues, document without symbol distributed in the Committee room, in English only)

1. *At the invitation of the Chairman, the members of the delegation of Namibia took places at the Committee table.*
2. Mr. NAMISEB (Namibia) said that the delegation would send a written reply to the Committee in response to the question concerning the population structure of his country.
3. With regard to membership of political parties, he said that freedom of association was guaranteed by the Namibian Constitution. Everyone was therefore allowed to join the political party of their choice.
4. Concerning the declaration permitting the individual communications procedure, a process of consultation was under way and the Government was planning to organize consultations among national institutions. A study had been made on the subject and reviewed at the highest political level. Namibia would provide more detailed information on the subject in its next report.
5. He confirmed that Namibia had not yet ratified the International Convention on Migrant Workers and Members of Their Families and said that the delegation would subsequently provide more detailed information on the subject in writing. As for training and information on the Convention, Namibia had put in place human rights training and information programmes for judges and magistrates. Magistrates responsible for dealing with complaints concerning racial discrimination already received training in that area. The Government was planning to step up that training and wished to cooperate with any programmes established for the purpose by the Committee or other United Nations bodies.
6. With regard to the process of combating discrimination against blacks and coloureds, he said that, owing to the recent history of Namibia, that process was still under way. Those population groups needed to benefit from economic advances, and measures had been taken to that end, but progress was slower than for political rights.
7. The delegation had noted the concern expressed by the Committee about the need to lift the San communities out of poverty; an evaluation would need to be made of the results of the measures taken so as to have more precise data and statistics that would make it possible to adapt strategies in that area.
8. Labour law stipulated a minimum salary for farm workers. The 2007 Labour Act should enter into force in mid-August 2008.
9. On the subject of traditional or customary law marriages, he said that the Namibian Constitution recognized customary law generally, provided that it was not contrary to the spirit and letter of the Constitution. Customary law therefore applied to marriage when its provisions did not run counter to those of the Constitution.

10. Traditional leaders were recognized by Namibian legislation; their status was regulated and must be respected. The Government did not take arbitrary decisions regarding them.

11. The Government had no knowledge of the 15 cases reported by the Rapporteur of persons recently being arrested and tortured in Namibia; however, that was a serious matter and a cause of concern. Those reports would be checked and further information would be provided in writing to the Committee as soon as possible.

12. On the question of refugees and asylum-seekers, he said that all refugees were placed in special camps but that they were permitted to seek work and, where appropriate, to leave the camp area. That was also true of persons pursuing studies outside the camps.

13. The status of Cuban doctors established in Namibia was governed by a bilateral agreement between Namibia and Cuba. They went to Namibia at the request and under the protection of their Government.

14. As for the reconciliation policy in Namibia referred to by Mr. Lahiri, it was still in progress. An economic and social capacity-building programme was being carried out for the black population. Although an evaluation had shown that progress was slow in that area, the Namibian Government hoped that that programme would help to speed up the process of economic integration of disadvantaged population groups.

15. In response to the question raised by Mr. Prosper on the subject of discrimination, he explained that the Namibian Government acknowledged that, given the country's recent history, discrimination could not disappear overnight since it had previously been legal and institutionalized in Namibia. That ideology was engraved in people's minds and it was not easy to rub it out. The Government was determined, however, to engage in a policy of national reconciliation and to take other measures to ensure the economic development of all categories of the population.

16. Regarding the question put by Mr. Thornberry on the methods used for census data collection, he said that the Namibian authorities would send a detailed written reply thereon. It was not easy to ask questions concerning ethnic affiliation; the persons questioned preferred to remain silent on the subject.

17. The cases handled by the Ombudsman were not limited to those mentioned in the report.

18. Replying to Mr. Peter, he confirmed that Namibia had not acceded to the Convention of the Organization of African Unity (OAU). The Namibian authorities would provide information in writing on the subject later. The difference between the OAU Convention and United Nations instruments related mainly to the definition of the term "refugee" and to the implementation mechanisms. The scope of the instruments established by the United Nations system in that area was more extensive and therefore covered the goals set by the OAU Convention.

19. In regard to the acquisition of nationality through marriage, there was no gender-based discrimination. That possibility was accordingly available both to a foreign man marrying a Namibian woman and to a foreign woman marrying a Namibian man. Since, however, marriage was a protected institution, every effort was made to prevent marriages of convenience and other breaches of marriage law.

20. Mr. ILUKENA (Namibia), taking up the subject of the financing of education for marginalized groups or the San population, said that such financing was provided on a regional basis in Namibia. Each of the 13 regions in the country was responsible for financing its own education system. In the regions, minorities or marginalized groups were the main beneficiaries of financing and were assigned a special quota to allow them access to education. Paragraphs 38 and 39 of the report of Namibia spoke of the measures that had been taken to offer alternative solutions to pupils from marginalized communities. School enrolment requirements had sometimes been relaxed so as to enable marginalized groups to attend school. At university level, a competitive entrance system had been established along with university preparation programmes, as persons from marginalized groups were seldom able to enter university under conditions of equality.

21. In response to the question posed by Mr. Peter on the desegregation of education and its results, he said the children who had started school since Namibia's proclamation of independence would complete their secondary education during the current year. The age requirement for higher education was 18 years. The Government had indeed sought to ensure the desegregation of education and open to everyone the doors of educational establishments that had previously been reserved essentially for whites. It had also seen to it that there was a sufficient number of such establishments and that they were provided with all necessary facilities. Thanks to those measures, the number of students admitted to establishments of higher education had increased very significantly since independence. In addition, some 5,000 students were currently studying abroad in a variety of fields. Desegregation was then beginning to bear fruit thanks to the efforts made in the interest of the majority.

22. Ms. SHIVUTE (Namibia) said that the Namibian Constitution did not authorize claims to ancestral lands as virtually all Namibians had lost their lands in one way or another. That decision had been taken on the occasion of a conference on the land issue which had been held in 1991.

23. Her delegation recognized that the land redistribution process was slow; only a very small number of persons had already been allotted land. Various methods had been applied, including expropriation with compensation, as provided for in the Constitution, but that had led to lawsuits by those who had been expropriated. With a view to finding other approaches, an audit had been made of the measures taken and the results achieved between 2003 and 2005 on the basis of which recommendations had been adopted by the Government in 2005 and translated into a programme of action. The Government had to strike a balance between the need to redistribute land and the requirements of the democratic system, which enabled land owners to take the State to court when their rights were not respected. That was the greatest difficulty it faced in that area.

24. Article 16 of the Constitution allowed expropriations, provided that they carried compensation. Concretely, when public works had been undertaken on State-owned lands, for instance to extend the railway system, and some communities had suffered from them, those communities had been paid compensation on the basis of market prices.

25. On the question of the role played by NGOs in tourism-related matters, it was true that NGOs had been involved in certain cases concerning land access, land utilization and the rights of traditional farmers, hunters or fishing people living in

very touristic areas. Studies carried out for the Government had shown that there were no legal provisions prohibiting the coexistence of nature reserves and agricultural activities. The Government did not dictate a single point of view in that regard but urged the communities to engage in dialogue. A small farm development project, for example, had recently been delayed, because it had been opposed by local communities.

26. Radical changes would no doubt need to be made to the "willing seller, willing buyer" system of land acquisition, which was being debated at national level. She stressed that no people, not even the San people, had been dispossessed of its land. It was true that, under the apartheid regime, the San people had had to leave its territory, which was currently the site of Etosha National Park. The Government was therefore seeking to allocate arable land as compensation to the San. Learning from past experience, it had ensured that the rights of the San were preserved when new national parks were created and that the members of that community could live in the vicinity.

27. In the context of the land redistribution process, the Government had established 13 administrative regions, each with a regional resettlement committee to which people could apply in order to be allocated land. The regional committees were composed of a representative of the regional administration, indigenous, young and disabled people, and women. Their task was to identify persons meeting the greatest number of criteria to benefit from the resettlement or land allocation programme.

28. There were several strands to land reform, including the acquisition by the State of land located in an area suitable for commercial farming, where there were some 1,200 farms in the hands of 4,000 families, mostly white. The Government had therefore set itself the goal of ensuring that natural resources were redistributed and that all Namibians could cater to their needs and sell their production and possibly create income-generating activities, thereby helping to increase GDP.

29. The resettlement programme and the land redistribution programme targeted three particular groups: first, persons without land, income or livestock; secondly, those without land or income but with a few head of livestock; thirdly, those with an income who owned livestock but without land on which to settle or allow animals to graze. Members of the San community, former soldiers, returnees, displaced persons, disabled persons and people from overpopulated community areas were among the priority target groups.

30. Another part of the land reform consisted in defining land tenure systems and ensuring safe accommodation for persons from communal areas. Following independence, the Ministry of Lands and Resettlement had been set up to administer land considered to be a strategic national resource, speed up the land reform and resettlement process, remove the huge disparities in land distribution and facilitate the integration of the most disadvantaged Namibians. A technical team had thus been put in place to review the legal and political framework of the various plans and programmes and evaluate the economic, financial and ecological sustainability of the reform.

31. In view of the magnitude of the task, the Government had drawn up a strategic plan and had set itself as a goal for 2030 ("Vision 2030") to make Namibia a prosperous and industrialized, peaceful and stable nation.

32. In 2003, the Government had acquired only 204 commercial farms, covering 133 hectares instead of the 5 million hectares planned in the land redistribution programme. Moreover, it had considered that the communities concerned had not been sufficiently consulted and had therefore found it necessary for other stakeholders to be involved in the land reform process. It was true that the Ministry of Lands and Resettlement was responsible for land redistribution but not for land development or agricultural production.

34. Mr. KAMATUKA (Namibia) said that the Government was fully aware of the situation and had no intention of denying that the San lived in extreme poverty. Members of that community were indeed among the most disadvantaged people in the country since they did not have access to education and did not possess identity documents. To remedy that injustice and address the problem of civil registration, mobile teams travelled through the country to make a census of the San, who seldom knew their age. The teams sometimes had to call in doctors and specialists to determine the age of the persons concerned, since some of them could not receive a retirement pension as they were unable to prove their age.

35. It was also true that the San were not represented politically or in government bodies. Programmes were therefore being carried out to encourage political parties to include in their lists of candidates for election representatives of that community, together with women, Namibia having opted for proportional representation for legislative elections in particular.

36. As for participation in decision-making, concerning for example development, education or land reform, the San were consulted systematically, in particular through their elders or traditional leaders. In Africa, it was a basic principle to consult the elders. When, as sometimes happened, decisions were taken without the prior consent of the communities concerned, it was because of human error, not an arbitrary governmental decision.

37. The Namibian Constitution protected cultural rights. The San people could practise the rites that were part of their culture in the same way as other communities, so as not to lose their cultural identity.

38. Namibia had ratified the Declaration on the Rights of Indigenous Peoples in September 2007 and hoped to continue along that path by ratifying ILO Convention No. 169 on indigenous and tribal peoples in independent countries.

39. It was indisputable that Etosha National Park had been created on land formerly occupied by the San; for that reason, it was imperative that they should be resettled within the vicinity of their ancestral lands. However, they could not claim any right to the lands, since all Namibians had been displaced during the colonial period. To eradicate the extreme poverty in which that people lived and improve their living conditions, it was essential for all private and public actors to unite their efforts, as the Namibian Government could not meet that challenge alone.

40. Ms. TJAHIKIKI (Namibia) said that, over the years, the Government had carried out policies and programmes to improve the standard of living of members of the most marginalized communities, including the San, in order to redress the socio-economic imbalances of the past. The Government had recognized, in the years immediately following independence, that some communities were in need of specific empowerment programmes. The San and the Himba had been the earliest beneficiaries.

41. The Government was fully aware of the extreme poverty and marginalization of the San people and had accordingly put in place specific education and resettlement programmes for them. Those programmes were often carried out with the help of non-governmental organizations. The mobile teams sent out to make population surveys of the members of that community and to help them had discovered that most of them did not know how old they were and did not have identity papers. In addition to adding to their social exclusion, that situation presented problems in terms of political representation since, as they were not included in the official registers, they could not be recognized or represented politically. Mindful of that situation, the Government had carried out programmes to ensure that all Namibians, including women and marginalized groups, were represented politically.

42. The culture of the San people was protected by the Constitution. In addition, Namibia, which had voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in September 2007, was planning to accede to ILO Convention No. 169 on indigenous and tribal peoples.

43. Mr. NAMISEB (Namibia) said that the question of compensation to be granted to the descendants of the Herero people who had suffered genocide by the Germans at the beginning of the twentieth century was the subject of bilateral discussions between Namibia and Germany.

44. Mr. AVTONOMOV wished to know whether the 381 persons whose citizenship was said to be in the "Not states" category in the first table in the periodic report under consideration were stateless persons and, if so, what measures had been taken by the Namibian authorities to come to their assistance. He drew the attention of the delegation to the Committee's General Recommendation No. XXX concerning non-citizens and asked to know its position in that regard.

45. Noting that paragraph 23 (part II) of the periodic report dealt with the Council of Traditional Leaders established under Act No. 13 of 1997, he wished to know the exact composition of that body and whether the traditional leaders of all indigenous peoples, including the San people, were represented in it.

46. He also noted that, under amended section 11 (1) of the Racial Discrimination Prohibition Amendment Act of 1998, it was no longer punishable by law to ridicule any person or group of persons on the ground that they belonged to a particular racial group or to cause, encourage or incite disharmony or feelings of hostility or ill will between different racial groups or persons belonging to different racial groups. He drew the attention of the delegation to the fact that many acts of discrimination were motivated by purely ethnic and racial considerations and that individuals needed to be protected against such acts.

47. Mr. de GOUTTES noted that the delegation had stated that the question of the compatibility of the new provisions of the 1998 Act with article 4 of the Convention would be examined; apparently they were more restrictive than those of the previous law and offered less protection for the victims of certain acts of racism. He understood that that legislative amendment resulted from the decisions of the High Court and Supreme Court of Namibia; however, the Namibian legislature was required to assess the compatibility of legal provisions in force with the State's international commitments and, where appropriate, to consider amending them.

48. He recalled in that connection that, in its General Recommendation No. XV, the Committee had explained that the provisions of article 4 of the Convention were of a mandatory character and that the prohibition of the dissemination of all ideas based upon racial superiority or hatred was compatible with the right to freedom of opinion and expression. Consequently there was no conflict in law between freedom of expression and the right to protection against racism.

49. He went on to explain that, even though individuals could, in view of Namibia's monistic conception of law, invoke the Convention directly before the national courts, those courts were nevertheless bound to apply domestic legislation directly, which needed to be modified by the legislature if it proved to conflict with the State party's international commitments. The solution then lay in the hands of the Namibian legislature.

50. On the question of land reform and national resettlement and land redistribution policy (para. 41), he welcomed the fact that that policy was based on the "willing seller, willing buyer" principle (para. 264) and wished to know what percentage of land had been acquired by the State under such agreements and what percentage had been redistributed following expropriations.

51. Mr. THORNBERRY was pleased to learn that the rights of the San people had been respected by Namibia in areas where national parks had been created, considering that so many other countries had not hesitated to expel indigenous peoples from their ancestral lands. Concerning the special measures taken for the San and other marginalized groups, he said that it was not always desirable to have recourse to special measures which, by definition, were temporary, as they were not always in conformity with the principle of the permanent rights of indigenous peoples. The New Zealand Government, which had also tended to adopt special measures and programmes to assist indigenous peoples, had for its part acknowledged that such temporary measures jeopardized the efforts made to settle the historical claims of indigenous peoples.

52. Mr. PETER expressed satisfaction with the very detailed and extensive replies given by the delegation to the many questions of the Committee members. He also commended Namibia for having opted for a monistic system which enabled it to incorporate automatically into its domestic law all the international instruments it ratified.

53. He wished to know whether Namibia, as a State Member of the African Union, was planning to accede to the 1969 OAU Convention governing the specific aspects of refugee problems. If that were the case, it would allow Namibia to supplement the system set up to help refugees.

54. Mr. KEMAL said he was impressed by the professionalism of the delegation. He was pleased that bilateral negotiations had begun between Namibia and Germany to compensate the descendants of the Herero people for the atrocities committed at the beginning of the twentieth century and wished to know whether claims could be addressed to the South African Government concerning the wrongful acts committed by the apartheid regime against the San people.

55. Noting that 5 million hectares of land were to be acquired by the Government for the purposes of redistribution, he inquired whether precedence would be given to the poorest tribe members.

56. Mr. HUANG Yong'an welcomed the serious and frank attitude of the delegation during the dialogue. Namibia was a young country which, after its independence, had tried to shake off the legacy of racial discrimination. The Namibian Government had adopted an impressive number of measures to protect the rights of minorities, the San and others, and ensure that they enjoyed all economic and social rights, including the right to development, the right to education and the right to health care.

57. Socioeconomic development was the main priority of developing countries in order to ensure optimum protection for human rights. The Namibian Government had made significant progress in that regard, even though it still had a long way to go. It was to be commended for the efforts made to implement the Convention.

The meeting was suspended at 11.40 a.m. and resumed at 12.10 p.m.

58. Mr. NAMISEB (Namibia), commenting on the table in paragraph 11 of the report, which contained population statistics broken down by citizenship, said that the category "All other countries" covered citizens of non-African countries and that the category "Not states" comprised non-citizens who had not specified their citizenship in the census questionnaire. They were therefore not stateless persons. He noted in that connection that, under the provisions of the Citizenship Act, no one could be divested of their Namibian citizenship unless they had acquired another, so as to ensure that those concerned did not become stateless.

59. The delegation shared the concerns expressed by some Committee members regarding the abrogation and amendment of certain provisions of the 1991 Racial Discrimination Prohibition Act, which limited the remedies available for the prosecution of persons publicly advocating racial hatred. The delegation would inform the Namibian authorities of the Committee's point of view and would do everything possible to ensure that one of the priorities of legislative reform would be to review the relevant amendments.

60. The delegation had noted the suggestion by a Committee member concerning the accession of Namibia to the 1969 Convention of the Organization of African Unity governing the specific aspects of refugee problems in Africa and would encourage the Government to look into the matter.

61. Ms. SHIVUTE (Namibia) said that the delegation did not possess comprehensive, updated statistics on the implementation of public land redistribution policies and that she would send them to the Committee later. Nevertheless, to give an idea of the situation, she said that in 2005, 1,600 families had been resettled on 120,000 hectares of redistributed land, which still fell far short of the goals set in the strategic plan for 2005-2010, under which 52,000 families should be resettled and 5,300,000 hectares redistributed in 2010. Furthermore, for the time being, only three farmers had been expropriated and compensated by the State: the area acquired represented 12,000 hectares, which was insignificant in terms of the 15 million that the Government was intending to acquire. Progress in implementing the strategic plan was thus very slow and if the State only bought back land on the basis of "willing seller, willing buyer", it would not achieve the goals it had set itself within the time frame.

62. In order to update the statistics, a national audit of the family resettlement programme had been launched in order to know more about how the beneficiaries

used the land on which they had been resettled. Fuller information on the subject would be sent subsequently to the Committee.

63. Upon Namibia's accession to independence, the Government in power at the time had found that the previous regime had not established any land-use plan. In order to fill that gap, eight integrated land-use plans had been drawn up. They had shown that the territory of Namibia consisted of some 40 per cent of land unsuitable for farming, 36 per cent of arable land and 33 per cent of communal land administered by the traditional authorities. The Government was planning to develop regional land-use plans in order to determine whether land in the region concerned was arable, whether it should be classified as nature reserves or whether it could be used in some other way. For the time being, it was proceeding with the demarcation of small farms in communal areas. That work had been carried out in all the regions concerned, except in those where the San lived, as the Government had not been able to reach an agreement with that minority although it had been in negotiations with it since 2000.

64. One of the problems of land reform was linked to the fact that the land acquired by the State was divided up into small lots which were then put on sale by tender. That meant that only persons who could read and write had access to the tenders, which excluded persons belonging to the most disadvantaged groups. For that reason, a bill to empower the Ministry of Lands and Resettlement to allocate lands to marginalized groups was being prepared. Lastly, given that integrated land-use plans must be updated every 10 years, those that had been drawn up in 2000 were due to be comprehensively reviewed in the near future.

65. Ms. TJAHIKIKI (Namibia) said that Namibia had adopted two laws on traditional authorities: the Traditional Authorities Act and the Council of Traditional Leaders Act. The Council of Traditional Leaders had a membership of 42, including three San. Detailed information would be provided later to the Committee concerning the criteria for admission of traditional leaders to the Council.

66. Mr. KAMATUKA (Namibia), clarifying one of the statements made by the delegation, said that the Namibian Government sorely regretted the lack of progress in bringing education to the San and sincerely hoped to achieve better results in that regard.

67. In reply to Mr. Thornberry, he said that Namibia was carrying out activities in collaboration with States Members of the Southern African Development Community, particularly in language teaching. In addition, Namibia was planning to organize jointly with the International Labour Office a conference bringing together members of the Southern African Development Community, which would focus on San communities living in the region. Lastly, on the question of San expulsions under the apartheid regime, no complaint had yet been filed against South Africa by those concerned.

68. Mr. EWOMSAN, Country Rapporteur, said that the dialogue between the Committee and the Namibian delegation had been frank and constructive and that he hoped that the State party would be submitting its next periodic reports more regularly.

69. *The delegation of Namibia withdrew.*

The meeting rose at 12.40 p.m.