



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

Distr.
GENERAL

CERD/C/NAM/CO/12
22 September 2008

Original: ENGLISH

**COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION**
Seventy-third session
28 July - 15 August 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

NAMIBIA

1. The Committee considered the eighth to twelfth periodic reports of Namibia (CERD/C/NAM/12), submitted in one document, at its 1878th and 1879th meetings (CERD/C/SR.1878 and CERD/C/SR.1879), held on 29 and 30 July 2008. At its 1896th meeting (CERD/C/SR.1896), held on 12 August 2008, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the eighth to twelfth periodic reports by the State party. It notes with appreciation the efforts made by the State party to comply with the guidelines for the preparation of reports and to address the issues raised by the Committee in its previous concluding observations.

3. The Committee welcomes the opportunity to resume the dialogue with the State party and expresses appreciation for the frank and sincere dialogue held with the delegation and the comprehensive responses provided to the list of issues and questions posed by Committee members.

GE. 08-44164

4. Noting that the report was almost 10 years overdue when submitted, the Committee invites the State party to observe the deadlines set for the submission of its reports in the future.

B. Positive aspects

5. The Committee welcomes the commitment expressed by the State party to reconciling Namibian society and building a nation in which all communities can live in peace and harmony, irrespective of their national and ethnic origin, colour, belief or language. It acknowledges the difficulties with which the State party has been confronted in eliminating racial discrimination following decades of its institutionalization during colonial occupation. The Committee commends the State party for its critical self-assessment during the dialogue with the Committee.
6. The Committee welcomes the State party's efforts to combat segregation and racial discrimination in various areas, particularly education.
7. The Committee also welcomes the adoption of special measures in the context of the Durban Declaration and Programme of Action and, in accordance with article 1, paragraph 4, and article 2, paragraph 2, of the Convention, with the purpose of securing adequate advancement of racial, ethnic and other groups that have experienced discrimination.
8. The Committee welcomes the intention of the State party to hold a national census in the near future and notes that information obtained from such census will enable a better assessment of the implementation by the Committee and the State party itself.

C. Concerns and recommendations

9. The Committee notes with concern the paucity of socio-economic data provided in the current report and underlines the importance and value it attaches to such data.

The Committee recommends that the State party take all necessary measures to ensure that socio-economic data relevant for the monitoring of the Convention is available in the next report. In this connection, the Committee draws the State party's attention to paragraphs 10 to 12 of the reporting guidelines for the CERD-specific document adopted at its seventy-first session.¹

10. While noting with satisfaction that, according to article 144 of the Namibian Constitution, the Convention is directly applicable by Namibian courts, the Committee is concerned that the definition of racial discrimination in the Racial Discrimination Prohibition Act of 1991 is not completely consistent with article 1 of the Convention.

¹ CERD/C/2007/1.

The Committee recommends the State party to ensure that its domestic law conforms to the Convention. The State party is also encouraged to strengthen its efforts to provide training for judges and lawyers to increase their awareness of the content and the direct applicability of the Convention at the national level.

11. While noting the establishment of a Law Reform and Development Commission which is charged with, inter alia, the review of discriminatory laws dating back to colonial times, the Committee reiterates its concern about the discriminatory character of some Namibian laws that remain in force, including with regard to the administration of intestate inheritance. It also remains concerned about aspects of customary laws of certain ethnic groups on personal status that discriminate against women and girls, including laws pertaining to marriage and inheritance. (arts. 2 and 5(d)(iv) and (vi))

The Committee urges the State party to review its laws with a view to removing discriminatory laws in order to provide equal protection and treatment to all persons. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends in particular that the State party urgently ensure that its laws, especially on marriage and inheritance, do not discriminate against women and girls of certain ethnic groups. It invites the State party to consider introducing a system which allows individuals a choice between customary law systems and the national law while ensuring that the discriminatory aspects of customary laws are not applied.

12. The Committee notes with appreciation the State party's intention to increase the budget allocated for special measures, but remains concerned that not all communities might benefit from these programmes in practice. While noting the State party's assertion that it consults the affected communities when devising special measures, it is concerned by the existing perception that these programmes are imposed without consultation and active participation of these communities. (arts. 2 (2) and 5 (c))

The Committee encourages the State party to engage in a data-gathering exercise to ensure that special measures are designed and implemented for all beneficiary communities on the basis of their prior consultation and active participation, and that they will not result in the maintenance of unequal or separate rights for those groups after the objectives for which they were taken have been achieved.

13. The Committee notes with appreciation the legal provisions regarding the desegregation of the educational system. However, it remains concerned about the persistence of de facto discrimination regarding access to education, as well as the high illiteracy rate that continues to exist among marginalized parts of the population. (arts. 3 and 5(e)(v)).

The Committee urges the State party to strengthen the implementation of its laws and policies aimed at the desegregation of education. In particular, the State party should increase its efforts aimed at reducing illiteracy,

especially among the most marginalized communities. It requests the State party to provide, in its next periodic report, information on the impact achieved by these measures.

14. The Committee is concerned that the 1998 Racial Discrimination Prohibition Amendment Act restricts the scope of the original law regarding the prohibition of hate speech by limiting the possibility to prosecute such acts only as *crimen injuria*. It regrets that it did not receive any information on concrete measures taken to ensure that verbal attacks on minority groups by Government officials or other actors are subject to sanctions. (art. 4)

The Committee recommends that the State party review its laws in order to prevent, combat and punish hate speech with a view to upholding the provisions of article 4 of the Convention. Recalling its general recommendation No. 15 (1993) on article 4 of the Convention, the Committee reminds the State party that the exercise of the right to freedom of opinion and expression carries special duties and responsibilities, and that the prohibition of the dissemination of ideas based on racial superiority or racial hatred is compatible with the right to freedom of opinion and expression. The State party is urged to take firm action to counter any tendency to target, stigmatize, stereotype or profile persons and communities on the basis of race, colour, descent, or national or ethnic origin, especially by politicians.

15. The Committee notes with concern that it did not receive sufficient information on the status and situation of refugees and asylum-seekers in the State party, in particular with regard to their right to identity documents and the requirement for refugees and asylum-seekers to reside in special camps, unless a special permit is granted. (art. 5 (a) and (d)(i))

The Committee urges the State party to respect the right to freedom of movement of refugees and asylum-seekers within the borders of the State party's territory, as well as their right to identity documents, including by issuing official birth certificates to newborn children of asylum-seekers and refugees.

16. The Committee regrets that it did not receive sufficient information on the criteria used by the State party to recognize traditional leaders under the Traditional Authorities Act of 2000 as well as the Council of Traditional Leaders Act of 1997, including on whether the scope of the laws includes all indigenous communities. It is therefore particularly concerned that no institution exists to assess applications for recognition independently of the Government. (art. 5(b))

The Committee requests the State party to provide, in its next periodic report, information on the criteria used for the recognition of traditional leaders. The State party should ensure that the criteria used for the recognition of traditional leaders under the Traditional Authorities Act of 2000 are objective and fair and that their application process is monitored

by an independent body charged with assessing the legitimacy of applications for recognition by indigenous groups.

17. The Committee acknowledges the difficulties within a democratic system in implementing land reform policies with a view to addressing existing imbalances. However, it is concerned about the apparent lack of clear and transparent criteria for the redistribution of land in practice, and notes with concern the paucity of information concerning the implementation of relevant policies in this field. (art. 5(d)(v))

The State party is encouraged to implement its policies on land reform in such a way to ensure the equal exercise by the different ethnic communities of the rights enshrined in the Convention within the framework of a democratic system. The Committee invites the State party to provide information on the measures taken to ensure the implementation of land reform policy and particularly its impact on vulnerable groups.

18. The Committee is concerned about the lack of recognition of the rights of ownership of indigenous communities over the lands which they traditionally occupy or have occupied. (art. 5(d)(v))

The Committee reminds the State party of its general recommendation No. 23 (1997) on the rights of indigenous peoples, in particular paragraph 5, which calls on State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands and territories. It therefore encourages the State party, in consultation with the indigenous communities concerned, to demarcate or otherwise identify the lands which they traditionally occupy or use, and to establish adequate procedures to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws.

19. The Committee welcomes the statement that local communities participate in the management of new conservation areas. However, it is concerned about the ability of the local indigenous communities to pursue their traditional way of life in such parks. The Committee is also concerned that those communities whose lands were taken before 1990 have not been able to receive redress for this dispossession (arts. 5 (d)(v) and (e)(vi)).

The Committee encourages the State party to strengthen its laws and policies aimed at ensuring that national parks established on ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those indigenous communities. In cases where indigenous communities have been deprived of their lands and territories traditionally owned, the Committee recommends that the State party take steps to return those lands and territories or to provide adequate reparation measures, in accordance with paragraph 5 of general recommendation No. 23 (1997) on the rights of indigenous peoples.

20. The Committee remains concerned that despite the special measures taken by the State party to reduce poverty and to progressively realize equal and sustainable development, discrimination on the grounds of ethnicity with regard to the enjoyment of economic, social and cultural rights persists in the State party. (art. 5(e))

The Committee recommends that the State party conduct studies with a view to assessing and evaluating the level of enjoyment of economic, social and cultural rights by the different ethnic groups in the State party, based on which the State party should strengthen its efforts in combating poverty among marginalized groups as well as its measures aimed at promoting equal opportunities for all persons.

21. The Committee acknowledges the State party's stated intention to review the development programmes currently in place, as well as the steps taken by the State party to improve the economic and social situation of the indigenous communities, including by mobile school units, scholarships for San children, and non-discrimination training for employers. However, it remains concerned about the extreme poverty of the indigenous communities and its impact on their equal enjoyment of human rights. The Committee is particularly concerned about the high rate of HIV/AIDS infection among the San, their lack of access to identification documents, their low level of school attendance, and the comparatively low life expectancy among those communities. (art. 5(e))

The Committee recommends that the State party enhance its efforts to reduce poverty and to stimulate economic growth and development for the most marginalized groups, namely the indigenous communities, especially with regard to education and health. It requests that the State party provide, in its next periodic report, information on the active involvement of targeted beneficiaries in the decisions directly relating to their rights and interests.

22. The Committee notes with concern the low level of participation in political life and, in particular, the lack of representation in Parliament as well as regional and local public authorities of the indigenous communities, particularly the San community (art. 5(c))

The Committee recommends that the State party strengthen its efforts to ensure the full participation of indigenous communities in public affairs at all levels. It encourages the State party to revise its electoral laws with a view to encouraging political parties to broaden their appeal to ethnic minorities and to include a minimum proportion of candidates from these groups.

23. The Committee is concerned about the high incidence of rape of San women by members of other communities, which seems to be caused by negative stereotypes, and it regrets the lack of detailed information provided by the State party on this issue. (art. 5(b))

The Committee recommends that the State party adopt all necessary measures to ensure prompt, thorough and independent investigations into all allegations of rape against San women. It also urges the State party to increase its efforts aimed at combating prejudices against the San and to promote tolerance and foster intercultural dialogue among the different ethnic groups of Namibia.

24. The Committee, while welcoming the State party's efforts to enhance the economic and social participation of persons belonging to marginalized groups, in particular the San, notes with concern that integration policies and programmes might be detrimental to the protection of ethnic and cultural diversity of these communities. (arts. 5 and 7)

Recalling that the principle of non-discrimination requires that the cultural characteristics of all ethnic groups be taken into consideration, the Committee urges the State party to ensure that its integration policies and programmes respect and protect the cultural identities of persons belonging to national or ethnic minorities within its territory. The Committee further encourages the State party to ensure the participation of these groups in the design and implementation of integration policies and programmes, at both national and local levels.

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

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

26. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by the General Assembly in resolution 45/158).

27. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,² when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee urges 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

² A/CONF.189/12.

the national level. The Committee also encourages the State party to increase its efforts to actively participate in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

28. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites the State party to consider doing so.

29. The Committee recommends that the State party ratify the amendment to article 8, paragraph 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 resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

30. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official, most commonly spoken, and indigenous languages.

31. The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

32. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006.³

33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 14, and 23 above.

34. The Committee recommends that the State party submit its thirteenth, fourteenth, and fifteenth periodic reports, in a single document, due on 31 July 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session,⁴ and that it address all points raised in the present concluding observations.

- - - - -

³ HRI/GEN/2/Rev.4.

⁴ CERD/C/2007/1.