



UN PERMANENT FORUM ON INDIGENOUS ISSUES
QUESTIONNAIRE TO NATIONAL HUMAN RIGHTS INSTITUTION

With regard to the questions raised by the UN Permanent Forum, the Ombudsman of Namibia wishes to respond as follows:

Question 1

The Ombudsman is not aware of any individual in Namibia who can be described as an indigenous human rights defender. However, there are N.G.Os and civil society organizations that are active in promoting and protecting the rights of indigenous peoples. They are the Legal Assistance Centre, San Council, HIPPO, Women's Leadership Centre II Ana-Jeh San Trust-Namibia and other smaller regional based organizations. The Ombudsman maintains a constructive relationship with them and actively participated in their activities to enhance the rights of indigenous people.

Question 2

Article 16 of the Namibian Constitution provides that all persons shall have the right to own and dispose of movable and immovable property, individually or **in association with others.....** (emphasis added).

It may be assumed that in terms of this Article, indigenous people would enjoy this right in practice. It is however, not the case because in terms of Article 100 of the Constitution all communal land vests in the state.¹

¹Article 100 provides: "Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the state if they are not otherwise lawfully owned"

Article 17(1) of the Communal Land Reform Act,² strengthens the constitutional provision by providing that all communal land areas vest in the state in trust for the benefit of the traditional communities in those areas. The provision which vest communal land to the state effectively means that indigenous communities unlike individuals who have private title – do not have security of tenure for their land and in fact have no legal title to these land . With regard to the ownership of land by indigenous people, the 1991 Land Conference resolved that there will be no claim to ancestral land by any person in Namibia.³

Engagement of the Ombudsman in work relating to indigenous peoples' collective rights to lands, territories and resources

The Ombudsman initiated the development of a national human rights action plan (NHRAP) which was adopted by Cabinet and launched in December 2014⁴. The NHRAP speaks to seven focus areas. Focus Areas 5 deals with the Right to Land with the convening of a second land conference as a key intervention. In a report⁵, the Ombudsman recommends that a discussion point on ancestral land should be included on the agenda of the proposed land conference in 2018.

Focus Area 7 of the NHRAP deals with the Right of non-discrimination or equality, with the development of a whitepaper on indigenous peoples' rights as a key intervention. The Ombudsman developed a draft White Paper on the rights of indigenous peoples' in Namibia with its eleven (11) objectives.⁶

²Act no 5 of 2002

³See: Guide to Indigenous Peoples' Rights in Namibia" on website www.ombudsman.org.na

⁴See: Republic of Namibia: National Human Rights Action Plan 2015-2019 on website: www.ombudsman.org.na

⁵See Report on the National Inquiry into Racism, Racial and Other Forms of Discrimination and Tribalism (October 2017) on website: www.ombudsman.org.na

⁶See Draft White Paper on The Rights of Indigenous Peoples in Namibia (Oct 2014) website: www.ombudsman.org.na

Objective 5 requires: *“Improve Access to land and ensure secure land tenure”*. During September 2017, the Office of the Vice-President: Veterans, Marginalized and Disability Affairs held consultations on the Draft White Paper with indigenous communities in five Regions of the country. Staff of the Ombudsman participated in the workshops.

The Ombudsman conducted a national inquiry into racism, racial discrimination, discrimination in general and tribalism which culminated in a report which was tabled in the National Assembly during November 2017. Discrimination in regard to land resettlement and discrimination in general against indigenous people are issues that are discussed in the Report.⁷

Question 3

i) Hold community meetings with indigenous people at their villages to raise aware of their rights and the role and functions of the Ombudsman.

Between 9-14 October 2017, the Ombudsman and staff visited ten San Villages where we had community meeting with the residents.

ii) Public hearings on racism, racial discrimination, etc were held in regions where indigenous people are living to provide individuals the opportunity to raise their concerns. One of the concerns which we took up with the Ministry of Home Affairs and Immigration was the difficulty to obtain birth certificates and identity documents.

iii) Staff of the Ombudsman participated in all the workshops where the Draft White Paper was discussed with indigenous communities.

iv) the Ombudsman developed, printed and disseminated The Guide to Indigenous Peoples’ Rights in Namibia.⁸

Question 4

The Ombudsman developed the Draft White Paper that was submitted to the Office of the Vice President. Objective 1 of the Draft White Paper suggests the *“Development of National Legislation Protecting the Rights of Indigenous Peoples in Namibia”*.

⁷Ibid website: www.ombudsman.org.na, p40-54

Question 5

- i) The Ombudsman will assist indigenous people to bring their claim to ancestral land to the envisaged land conference in 2018.
- ii) To effectively engage with the Office of the Vice-President to have the Draft White Paper adopted by Cabinet and the full implementation of the eleven objective.

Question 6

Except for the NHRAP and the, strategies and measures referred to above, no other plans were adopted.

Question 7

- i) The Ombudsman wishes to refer to UN Permanent Form to his Report on the National Inquiry⁹ especially the recommendations that were directed to specific ministries for implementation. The implementation of these recommendation will be monitored closely.
- ii) We receive individual complaints which are investigated and the complainants informed of the outcome thereof. Individuals are assisted to file criminal charges against offenders with the police.

⁹Ibid: Website www.ombudsman.org.na