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REPORT

OF

THE PROMOTIONAL MISSION

TO THE

REPUBLIC OF NAMIBIA
2nd to 6th JULY 2001

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INTRODUCTION

The African Charter on Human and Peoples' Rights provides for the establishment of the African Commission on Human and Peoples' Rights. The 18th OAU Summit of Heads of State and Government meeting in Nairobi, Kenya on 26th June 1981 adopted the African Charter. The African Charter came into force on 21st October 1986 upon ratification by the requisite number of Member States. The first members of the African Commission were elected at the 23rd OAU Assembly of Heads of State and Government in July 1987 and the inaugural session of the Commission took place in November 1987.

Under the African Charter, the African Commission is mandated to promote the observance of the African Charter, monitor its implementation, ensure the protection of the rights and freedoms set out in the Charter across the continent, interpret the African Charter and advise on its implementation.

The Republic of Namibia is a State Party to the African Charter on Human and Peoples Rights. It ratified the African Charter on 30th July 1992.

A BRIEF POLITICAL BACKGROUND OF NAMIBIA

During the pre-colonial era, Namibia was inhabited by a number of indigenous communities like the Hereros, Ovambos, San, Namas, Damaras, Kavangos and Caprivians.

From the thirteenth century, German and British missionaries and foreign traders began penetrating the interior of Namibia. The traders soon brought into the country goods including arms, which they bartered for local Namibian commodities. Eventually European traders increased in number and started to acquire land through unequal trade agreements and other questionable means. Meanwhile the missionaries began interfering in local politics as mission stations and churches were planned as military centres.

Finally in 1890, the country was brought under German colonial rule until the end of World War I. During this period of colonisation, the Namibian people were denied their rights and their traditional way of life was disrupted. In 1915 the South African troops occupied Namibia and established a military administration in the territory. After the First World War the Allied Powers decided that Germany should be deprived of all its colonies including Namibia.

Through the Covenant of the League of Nations, Namibia was placed under the administration of the League of Nations Mandate system and was therefore not permitted to exercise its right to self-determination. Britain had been designated as the Mandatory Power for Namibia but in 1920, by a specific agreement, South Africa was appointed to administer Namibia on behalf of the British Crown.

On assuming its obligations under the Treaty, South Africa attempted to annex Namibia. It entrenched political, social and economic discrimination by institutionalisation accompanied by massive human rights violations. In violation of its mandate under the covenant of the League of Nations, South Africa encouraged the immigration of more whites from its territory to Namibia and promoted racial segregation.

The demise of the League of Nations and the mandate system saw the establishment of the United Nations Trusteeship System under the United Nations Charter. Countries with mandatory powers entered into a Trusteeship Agreement with the United Nations and by so doing placed their mandated territories under the new system. However South Africa rejected the idea that the mandate system had been superseded by the United Nations Trusteeship System and challenged the authority of the United Nations to interfere in the affairs of Namibia. Recommendations and appeals were made to South Africa asking it to relinquish its mandate over Namibia and conclude a Trusteeship Agreement with the United Nations but South Africa refused to do so. The matter was brought before the International Court of Justice (ICJ) for advisory opinions and the ICJ reaffirmed that the provisions of the UN Charter were applicable to South Africa in the sense that previously mandated territories should be brought under the trusteeship system. However, South Africa continued to reject the UN authority over Namibia.

In 1959 The South West African Peoples' Organisation (SWAPO) was formed within Namibia as an opposition to South Africa. During this period, there were mass campaigns against the illegal occupation of Namibia and the ongoing human rights violations. SWAPO leadership faced violent persecution and was eventually forced to leave the country for Tanzania where they established the first SWAPO headquarters. In October 1966 the General Assembly by resolution decided to terminate South Africa's mandate over Namibia. This was later followed in 1971 by an ICJ decision to the same effect but still South Africa remained obstinate.

The continued refusal of South Africa to comply with the resolutions of the UN General Assembly and the opinions of the ICJ forced SWAPO and the Namibians to wage an armed struggle in order to liberate Namibia. Thus an armed wing, the Peoples Liberation Army of Namibia (PLAN) was formed to fight for freedom. The first armed struggle for freedom began in 1966 and this situation continued until 1989. Throughout the struggle, Namibians continued to suffer under the South African Apartheid System and the exploitation of human and natural resources of Namibia also continued.

On the international scene negotiations continued and finally an agreement was reached calling for the holding of free and fair elections in Namibia and in 1989 SWAPO and South Africa signed a ceasefire agreement mediated by the United Nations. Elections were held monitored by the United Nations and SWAPO won the most seats. A Constituent Assembly consisting of all political parties was established to draft a new Constitution. Namibia became independent on 21st March 1990 and adopted their constitution in the same year.

Post-Independent Namibia

Namibia is a unitary, secular State with a multi-party system of government. It is divided into thirteen administrative regions. Each region has an elected Regional Council with a Regional Governor as chief executive. The Head of State and Government is the President, who shares executive power with the Cabinet of Ministers. There are 23 Cabinet members - including the President (Chairperson), the Prime Minister, the Attorney General and Ministers. The National Assembly has legislative power and is made up of 72 members elected from the party list method of Proportional Representation and up to six non-voting members elected by the President. Laws are subject to the assent of the President and where applicable to review by the National Council, which is made up of two members from each of the thirteen Regional Councils.

Members of local government are elected by secret ballot on the basis of the *first-past-the-post electoral method*.

GENERAL INFORMATION ABOUT NAMIBIA

The Land and People

Namibia is located in southern Africa, bordering the South Atlantic Ocean, Angola, Botswana, South Africa and Zambia. The total area of the country is 825,418 square kilometres. Namibia is one of the most arid countries in the world. Rainfalls are low and variable.

In terms of ethnicity, 87.5 percent of the population is black, 6 per cent are white and 6.5 per cent are mixed. English is the official language but Afrikaans is a common language of most of the population. German and other indigenous languages are also spoken. Namibia is generally a secular country and it is estimated that 80 to 90 percent of the people are Christian whilst 10 to 20 percent practice indigenous religions.

The literacy rate of the population is 38 per cent, 45 per cent of the males and 31 percent of the females are literate. The infant mortality rate is 70.88 deaths per 1,000 live births and life expectancy at birth for the total population is estimated at 42.46 years.

The 1991 census estimated the total population to be 1.4 million, 70 percent of who live in only 5 of the 27 census districts. 43 percent of the total population of Namibia are under 14 years and 53 percent between 14 and 64 years. Because Namibia is arid, it is one of the least densely populated countries with an average population density of 1.7 people per square kilometre. The implications of such aridity are that water is scarce, difficult and expensive to locate and extract and there is a high risk of irreversible degradation. Presently, commercial farms occupy 54% of the country mainly in the south and centre, communal land accounts for 40% largely in the north, proclaimed conservation areas 13% and diamond areas 2%.

Namibia's economy is primarily based on agriculture and fishing. The country's main natural resources are diamonds, copper, uranium, gold, lead, tin lithium, cadmium, zinc, salt, vanadium, natural gas and hydropower. The country also has small tourism sectors.

Namibia faces threats to human welfare and the economy. A major threat is HIV/AIDS, which is now the number one cause of death in the country and there still exists unequal land ownership and income disparities. The richest 10 per cent of society receive 65 per cent of income. Namibia is attempting to come up with initiatives to alleviate poverty and is spending about 30 per cent of its annual budget on education.

Being a young democracy, Namibia faces the challenge of trying to cultivate a culture of democracy and respect for human rights, which were never cultivated during the colonial occupation but rather violated and abused.

THE PROMOTIONAL MISSION

Mr Andrew Ranganayi Chigovera is the Commissioner responsible for promotional activities in the Republic of Namibia. The Commissioner had intended to undertake a mission to the country earlier in the year 2001. However, arrangements for such a mission were only concretised during the 29th Ordinary Session of the African

Commission and dates for the mission agreed upon with the country delegates. Initially the mission was supposed to be undertaken in the course of June 2001 but this was not possible and finally the mission did take place from 2nd to 6th July 2001. Ms. Fiona Adolu assisted Commissioner Chigovera on this mission.

The Inter-Ministerial Committee on Human Rights in Namibia coordinated the arrangements on behalf of the government and was in constant contact with the Secretariat of the African Commission and the Commissioner responsible. The Inter-Ministerial Committee in consultation with the Secretariat of the African Commission also prepared the programme

The objectives of the mission which the officials met were informed of were :-

1. To promote the African Charter, exchange views and information on import and implementation of the Africa Charter;
2. To raise awareness of and visibility of the African Commission and its functions especially among the relevant government departments and institutions and in civil society;
3. To discuss three important issues -: the Communication against Namibia brought by José Domingos Sikunda and the process for the ratification of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child;
4. Seek clarification and follow up on reports and information before the African Commission about the country;
5. To encourage a closer relationship between the African Commission and the Republic of Namibia;

Mr. Daniel Utoni Nujoma, the Chairperson of the Inter-Ministerial Committee on Human Rights in Namibia and Mr. Simataa Limbo, a legal officer with the Inter-Ministerial Committee received the delegation, assisted and accompanied them to most of the appointments.

MEETINGS

Permanent Secretary

The first meeting scheduled was with the Permanent Secretary of the Ministry of Justice, Ms. Shapwa as the Minister of Justice was at the time out of the country. The Chairperson and some Members of the Inter-Ministerial Committee on Human Rights also attended the Meeting.

Commissioner Chigovera introduced the African Commission delegation and informed the Permanent Secretary of the objectives of the mission. He stated that at the just concluded 29th session the African Commission, after examining Namibia's first periodic report, had come up with concluding observations. He outlined what was contained in the concluding observations and briefed her on what was expected of the government in terms of action to be taken.

The Permanent Secretary informed the delegation that the task of monitoring human rights in Namibia falls within the general mandate of the Ministry of Justice. However, coordination of human rights issues within the Ministry has been specifically delegated to the Inter-Ministerial Committee of Human Rights which was established in 1994. The Permanent Secretary invited Mr. Utoni Nujoma in his capacity as the Chairperson of the Inter-Ministerial Committee on Human Rights to brief the delegation about the human rights situation in Namibia.

Mr. Utoni Nujoma informed the delegation that initially the Inter-Ministerial Committee on Human Rights was a technical committee with the specific duty of writing country reports to treaty bodies.

This Committee is composed of the Ministries of Home Affairs, Defence, Foreign Affairs, Prisons and Correctional Services as these Ministries are concerned with the promotion and protection of human rights on a day-to-day basis.

The Committee in discharging its duties carries out various activities and they include

- Reporting to treaty bodies;
- Carrying out human rights education and training within government institutions, police, prisons, army, Members of Parliament, Regional Governors and the Judiciary.

In their training of police forces, the Committee targets the rank and file. The Committee also collaborates and runs training programs with the Human Rights and Documentation Centre of the University of Namibia and the International Committee of the Red Cross (ICRC). The Committee and the ICRC have trained the Namibian army in international humanitarian law.

The work of the Inter-Ministerial Committee on Human Rights and that of the Ministry of Justice is, however, hindered by the problem of inadequate staffing and as such the present staff members are overloaded with work; for instance, Mr. Utoni Nujoma who is the Chairperson of the Law Reform and Development Commission is obliged to assist with the running of Inter-Ministerial Committee. The Permanent Secretary stated that it is quite difficult to convince the government to recruit more members of staff.

On the question of setting up a National Human Rights Institution, the Commissioner informed the Permanent Secretary that the African Commission is encouraging member States to establish such institutions to remind and oversee government's enforcement of human rights issues. The Permanent Secretary informed the Commissioner that the matter of establishing a National Human Rights Institution had been discussed within the Ministry of Justice but was still under consideration.

With respect to the government's relationship with NGOs, Mr. Nujoma stated that the Inter-Ministerial Committee and other Governmental Institutions dealing with human rights enjoy a working relationship with some of the human rights NGOs in the country including the Legal Assistance Centre (LAC) and the National Institute for Democracy (NID). He however stated that their relationship with the National Society for Human Rights (NSHR) was not very good because from their method of work the government does not consider it to be an independent human rights organisation. The government was concerned that the NSHR was reporting unsubstantiated human rights violations allegedly committed by the Namibian authorities.

The Commissioner explained the relationship of governments and NGOs vis-à-vis the African Commission. He stated that if an NGO raises a human rights matter about a Member State, the African Commission is obliged to raise it with the government concerned, with a view to arriving at the correct position, discussing the matter and reaching a solution. The Commissioner promised to discuss the government's concerns during its meeting with the NSHR. But he also advised that this matter could be raised officially with the African Commission urging it to look into the matter with a view to verifying whether or not the NSHR is a credible human rights organisation.

Commissioner Chigovera also drew the attention of the Permanent Secretary to the fact that the country had not yet ratified two important OAU human rights instruments - the African Charter on the Rights and Welfare of the Child and the Protocol on the Establishment of an African Court. In her response, the Permanent Secretary informed the delegation that a Ministry had been created to take care of women affairs and child welfare. She expressed the hope that this Ministry would initiate the process of Namibia ratifying the African Charter on the Rights and Welfare of the Child. She also stated that there are ongoing discussions on ratifying the Protocol to the African Charter on the Establishment of an African Court and that the outgoing Minister had been keen on this issue and she promised to follow it up.

The Commissioner noted that there seemed to be debate within the country on gay rights and sought information on the legal position of homosexuals in the country and what government's policy is on the matter. The Permanent Secretary stated that the Constitution of Namibia talks about equal rights of sexes but is silent on issues of sexual orientation, and furthermore, the penal law is silent on homosexuality as such but specifies practicing sodomy as a crime. However, government policy does not encourage gay people to go public about their sexual orientation. Those persons that practice homosexuality in private will not be prosecuted. However, she was quick to add that no person had yet been arrested in Namibia because of their sexual orientation.

With regard to the communication brought against Namibia relating to José Domingos Sikunda, the Permanent Secretary stated that the Sikunda matter had been brought before the High Court of Namibia, which had nullified the deportation order made against him and ordered that Mr. Sikunda be released. The Home Affairs Minister had then refused to release Mr. Sikunda for various reasons but the Court had held him in contempt of court for defying a court order. She informed the delegation that Mr. Sikunda had nonetheless been released and was presently living in Namibia. The Ministry of Justice has however lodged an appeal against the decision of the High Court.

In view of these developments, the Commissioner advised that the Ministry of Justice should forward their submissions on admissibility on this issue to the African Commission informing them of the position of the Sikunda matter within the domestic courts. He stressed that the Commission's main concern in matters such as these is not the political issues but rather government's compliance with the justice system.

The Commissioner also drew the attention of the Permanent Secretary to the fact that the African Commission had come up with Concluding Observations following consideration of Namibia's periodic report at the 29th session. The Commissioner briefly explained the concluding observations and outlined what was expected of the government following the submission of those concluding observations. The question of land reform, which was a key issue, raised both within the periodic report and concluding

observations was discussed extensively. The Permanent Secretary requested some concrete advice from the African Commission on how government can approach the matter. The Commissioner advised that government is free to specifically address the African Commission seeking advice on the matter.

Attorney General

In the meeting with the Attorney General, the Honourable Pendukeni Iivula-Ithana explained that she was new in the office, as she had joined the Ministry as Attorney General in February 2001 when it was decided that the office of the Attorney General and that of the Minister of Justice be split.

Commissioner Chigovera briefly described the mandate of the African Commission and specifically the objectives of the promotional mission and informed the Honourable Attorney General that the African Commission was at this point in time on the road to working out better methods of carrying out their tasks. The Honourable Attorney General acknowledged the difficult task at the hands of the African Commission bearing in mind the diverse issues that they have to deal with on the continent like culture and religion. She stated that for Africa and the African Commission in particular to fully succeed in its supervisory role is heavily dependent on how genuine African governments are. It is therefore important in this respect that during the transition period of the OAU into the African Union, African governments be committed to setting up strong structures of the African Union and all the other structures created under the African Charter.

Commenting on the inadequacy of some of the provisions of the African Charter in terms of protecting the human rights of Africans, the Honourable Attorney General was informed that most of those provisions were a product of a compromise between African States and a need for uniformity in the face of the divergences that exist on the continent.

Concerning the structure within the Ministry of Justice and the Attorney General, she informed the delegation that on assuming her duties, she concentrated on restructuring the office and delineating the line of duties that fall under each portfolio to ensure that the Office does its work effectively. Therefore at the moment some issues are being shelved until this exercise has been successfully undertaken. In terms of duties of the Attorney General, the office ordinarily deals with all litigation brought against government. In this respect, the Commissioner informed the Honourable Attorney General that a complaint on behalf of José Domingos Sikunda had been brought against Namibia and was being handled by the African Commission. He requested that in view of what had been stated by the Permanent Secretary in the Ministry of Justice, her office should go ahead and forward its brief on admissibility to the African Commission.

The Honourable Attorney General was also informed about Namibia's periodic report that was examined by the African Commission at its 29th ordinary session. She was informed that frank and open discussions had taken place during consideration of that report and explained that the Concluding Observations that were drawn by the African Commission are meant to assist the Member State improve its human rights situation and should therefore not be seen as negative criticisms. He informed the Honourable Attorney General that the African Commission expects a response to the Concluding

Observations preferably when Namibia is submitting its next periodic report except if there are any issues that need to be addressed immediately.

The Honourable Attorney General explained that the Namibian government is trying to ensure that the populace realise their human rights. However, lack of adequate resources are a contributing factor to government's failure to deliver on their obligations in this field. She also recalled that the historical background of the country should be taken into account when judging the country's performance in this area, which is not helped by the fact that the human rights culture is a fairly new concept that came with the independence of the country.

Regarding ratification of the regional human rights instruments, she stated that the government of Namibia is in the process of ratifying the African Charter on the Rights and Welfare of the Child and that the matter was now at Cabinet level.

Ministry of Foreign Affairs

At the Ministry of Foreign Affairs, Information and Broadcasting, the delegation met with the Deputy Permanent Secretary with the Regional and Bilateral Affairs Department, Ambassador Nicky P. Nashandi and two other officers from the same Ministry.

The Commissioner informed the Ambassador that in general terms, communication to a State Party is through the Ministry of Foreign Affairs thus making it an important channel by which the African Commission communicates with a Member State. It is therefore of importance that the delegation meets officials from the Ministry of Foreign Affairs during their missions.

Commissioner Chigovera briefed the Ambassador about the African Commission, the duties of the Commissioners and the objectives of the promotional mission. He stated that the African Commission while carrying out its activities should not be seen as a court but as an institution that assists Member States by advising them on how aspects of the African Charter can be implemented. He informed the Ambassador that even though the African Commission is a body of the OAU which is a political institution, the Commission itself is an independent human rights body. Commissioner Chigovera also made it known that the Commission has its share of problems which include, among others, lack of human and financial resources at its Secretariat and the lack of adequate time on part of the Commissioners since they work on a part time basis.

Commissioner Chigovera also briefed the Ambassador about the Special Rapporteur system of the African Commission which he said was meant to address specific problems faced by the countries throughout Africa. These include the Special Rapporteur on the Rights of Women in Africa, the Special Rapporteur on Prison Conditions and Conditions of Detention in Africa and the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions.

He drew the attention of the Ambassador to the Concluding Observations that arose out of examining Namibia's first periodic report and outlined the key issues that government has to act upon, specifically the recommendation calling on Namibia to amend some of the provisions of its constitution and bring them in line with the provisions of the

African Charter. He also told the Ambassador about the complaint brought on behalf of Sikunda against Namibia that is before the African Commission.

During the discussions, it was apparent that government had serious concerns with some human rights NGOs, and the Commissioner advised that it is very important for government to be able to communicate with the various parties even though there is disagreement on some issues as this serves to help with the implementation of the rights under the African Charter.

The Commissioner informed the Ambassador that Namibia had not yet ratified the Protocol on the Establishment of an African Court and urged the Ministry of Foreign Affairs to follow up on the matter.

The Ambassador noted that Commissioner Chigovera was well suited to cover Namibia for promotional activities as he is from a country with a similar historical background and would therefore be in a better position to appreciate the situation in Namibia.

Speaker of Parliament

In the meeting with the Speaker of the Namibian Parliament, Honourable Dr. Tjitendero, Commissioner Chigovera mentioned that Parliament plays an important role in governmental legislative programs as the Members of Parliament have a direct communication link with the people at the grassroots and also determine the finality of bills or laws brought before parliament.

The Commissioner requested the Honourable Speaker of Parliament to remind Members of Parliament to familiarise themselves with the provisions of the African Charter. This will enable them relate the Charter provisions to the country's domestic laws and determine whether domestic legislation is in line with the provisions of the Charter. He appealed to the Honourable Speaker to assist in expediting the process of ratifying the Protocol on the Establishment of an African Court and the African Charter on the Rights and Welfare of the Child.

The Honourable Speaker stated that he believed Namibia was not lagging behind as far as promotion of human rights was concerned and that no system is perfect in this respect. He pointed out that Namibia is a new democracy and is therefore still dealing with some issues that are important to the country on a priority basis. He mentioned that presently Namibia is trying to bring all its laws to conform with the country's international obligations and that it is in that spirit they are in the process of ratifying the African Charter on the Rights and Welfare of the Child.

The Speaker however conceded that there is no systematic approach within the country to ratifying international instruments. He stated that parliament work is usually done on priority basis and observed that the Ministry of Justice is likely to support ratification of the Protocol on the Establishment of an African Court. He informed the Commissioner that Namibia had ratified the Statute establishing the International Criminal Court and that he believed there should be no difficulty for Namibia to ratify the Protocol establishing an African Court.

A discussion ensued on the structures to be established within the African Union and the Speaker was of the view that the idea of a Pan African Parliament was good but that the

level of its operation on the continent would depend on the level of involvement of the African people. He questioned what role the Member States' National Assemblies would play in this Pan African Parliament.

The Commissioner encouraged the Speaker to establish and keep in contact with the African Commission.

Ministry of Women Affairs and Child Welfare

The delegation also met with the Minister for Women Affairs and Child Welfare, Honourable Netumbo Nandi-Ndaitwah who is also a Member of Parliament, and officials from the Directorates of Gender and Child Welfare.

The Honourable Minister informed the delegation that the Ministry of Women Affairs and Child Welfare is new as it had been created by the President in 2000. The Ministry is composed of two Directorates - the Directorate of Gender and the Directorate of Child Welfare. The Honourable Minister stated that one of the reasons for setting up this Ministry was to ensure that co-ordination of issues relating to child welfare fall within one ministry rather than under many ministries, as was the case in the past.

The Commissioner informed the officials from the Ministry about the African Commission and its activities. He stated that the participation of this Ministry in the activities of the African Commission was crucial bearing in mind that presently the Commission is in the process of finalising the drafting of the Protocol on the Rights of Women in Africa. Furthermore, the African Charter on the Rights and Welfare of the Child had come into force and Namibia had not yet ratified it. He thus encouraged the Ministry to participate in the process of drafting the Protocol on the Rights of Women in Africa and urged the Ministry to facilitate the quick ratification of the African Charter on the Rights and Welfare of the Child and the Protocol on the Establishment of an African Court. This is because as a Ministry with a role in human rights they should have an interest in the African Court coming into existence, as it will affect the enforcement of the very rights that the Ministry pledges to protect.

Dr. Ngifindaka from the Directorate of Gender Affairs informed the Commissioner that the Ministry through the South African Development Community (SADC) Gender Unit had met and discussed the Draft Protocol on the Rights of Women in Africa and also made their input to it which should have been forwarded to the OAU.

The Commissioner informed them of the relationship that the African Commission has with NGOs and National Human Rights Institutions through being granted observer status and affiliate status respectively. He noted with dismay the non-existence of a working relationship between the African Commission and sub regional institutions like the SADC. He was of the opinion that in a similar framework the SADC Gender Unit should request the African Commission to grant it some special status to enable it participate in the activities of the African Commission.

With respect to the periodic report submitted to the African Commission by Namibia in accordance with its obligations under the African Charter, the Commissioner informed the honourable Minister that Namibia had regularly submitted its reports with the most recent one having been considered at the Commission's 29th Session in Libya. The Commission had made Concluding Observations with recommendations on the Report.

He informed the Honourable Minister that the report did not contain adequate information on child welfare issues in the country and advised that the Ministry should endeavour to report on this aspect in the future periodic reports of the country.

The meeting was concluded with an undertaking from the Honourable Ministry to involve her Ministry more in the activities of the African Commission and follow up on ratification by the country of the African Charter on the Rights and welfare of the Child.

Law Reform and Development Committee

In the meeting with the Law Reform and Development Committee the delegation held discussions with the Chairperson, Mr Daniel Utoni Nujoma, the Secretary, Mr. Potyieter and other officials from the Committee.

The Chairperson informed the delegation that the Committee is established by Statute and is charged with the duty to overhaul all the laws, amend, repeal, codify and draft new laws for enactment. He stated that the Committee also sits on the Committee for Juvenile Justice in Namibia. The Chairperson reported that presently they are handling three major projects that include the Violence Project, the Family Law Project and the Publications Project.

Under the Violence project the Committee has completed work on the Combating of Rape Act, Domestic Violence Act and Vulnerable Witnesses Act, while under the Family Law Project the Committee worked on the Married Persons Equality Act, Inheritance and Succession Act and is finalising the report on the Customary Law on Marriages. The reports on the Small Claims Court Act and that on Maintenance had been submitted to the Ministry of Justice. Under the Publications Project, there is ongoing work on Internet exposure and production of publications.

He reported that the Committee had also finalised the drafting of the Married Persons Act, Maintenance Act and the Small Claims Court Act.

Commissioner Chigovera informed the Committee about the Concluding Observations given by the African Commission following examination of Namibia's periodic report at its 29th session, stating that among the recommendations were that of looking into law reform in the areas of Indigenous Persons and the Land Reform programme in the country.

He told the Committee that it had a role to play in expediting the ratification by Namibia of the African Charter on the Rights and Welfare of the Child and the Protocol on the Establishment of an African Court.

The Secretary of the Committee informed the delegation that Parliament is now at a time when it is prepared to accept changes and therefore the Committee feels it should move faster and take advantage of this atmosphere.

The meeting was concluded with the Commissioner encouraging the Committee to establish a working relationship with the African Commission.

Chief Justice

The delegation also met with the Chief Justice of Namibia, Justice Strydom. During the meeting the Commissioner explained to the Chief Justice the African Commission System, composition of the African Commission and the purpose of the Promotional Mission. The Commissioner also informed him that the African Commission at its just concluded 29th session had examined Namibia's periodic report. He restated the importance of Namibia ratifying the African Charter on the Rights and Welfare of the Child and the Protocol on the Establishment of an African Court.

The Chief justice informed the Commissioner that the Courts in Namibia do try to apply the provisions of international instruments or even use them as guidelines in their decisions. The Commissioner requested the input of the judiciary of Namibia in the human rights instruments and complaint system of the African Commission.

The Commissioner and Chief Justice discussed at length the communication/complaint procedures of the African Commission. The Chief Justice informed the Commissioner that the judiciary within the SADC region regularly meet and promised that in their forthcoming meetings he will raise the matter of cooperation with the African Commission particularly the Commission's interest in participating in these meetings.

The Chief Justice invited the African Commission to involve the Namibian judiciary in its activities and particularly share its decisions and reports on its activities.

Ministry of Prisons and Correctional Services

Prior to the visit to the prisons, the delegation attended a meeting at the Ministry of Prisons and Correctional Services during which they discussed the prison system in Namibia. The meeting was attended by the Commissioner for Prisons, Commissioner Evaristus Shikongo, Deputy Commissioner John W. Nyoka, Deputy Commissioner J.F. Mabakeng, Assistant Commissioner Mrs A.T. Amutenya and Mr R.S. Malobela.

Commissioner Chigovera informed those persons present about the African Commission and the objective of the promotional mission. He briefed them on the system of the Special Rapporteurs and specifically about the mandate of the Special Rapporteur on Prison Conditions and Conditions of Detention in Africa.

The Commissioner of Prisons informed the delegation that the Ministry of Prisons and Correctional Services was established in May 1995, and gave a brief on the structure of the Ministry and its operations. The Namibian Prison service which is now under the Ministry of Prisons and Correctional Services was formerly a department of the Ministry of Home Affairs; and before independence, it was under the Ministry of Justice. The major goal of the Prisons service is to run the prisons in the country efficiently with emphasis on rehabilitation, reformation and social reintegration of offenders by providing them with safe, secure and humane conditions of detention.

In keeping with their objectives, Commissioner Shikongo reported that prison officials are trained on a regular basis on respecting the human rights of prisoners. This training is occasionally carried out in collaboration with Namibian human rights NGOs and Institutions like the Legal Aid Centre, University of Namibia and the Justice Training Centre.

Commissioner Shikongo stated that the major challenge facing the Prisons service is the increased growth in the prison population thus leading to overcrowding in the prisons. To address this problem, it was suggested that new institutions be built; however, it was soon realised that this served only as a temporary measure. In effect, the Ministry is now looking towards introducing Community Service since the majority of the inmates in these prisons have committed petty crimes. He stated that the idea had already been introduced to the public and they had been quite receptive to the idea of Community Service.

The Commissioner also cited lack of adequate funds to cater for the facilities that the prisoners should enjoy as another problem but that some donor organisations had come in to provide some funds to alleviate this problem.

On the question of juvenile offenders, the Commissioner was informed that presently juveniles are detained within juvenile sections in the main prisons. Commissioner Shikongo however stated that Nepemba Juvenile Centre, which is being reconstituted into a Reformatory School, is due to be opened in 2002/3. It is hoped that all juvenile offenders will be accommodated at this school when opened.

Following the discussions, Commissioner Chigovera advised that the Ministry should include human rights training in the curriculum of trainees as prison officials in terms of human rights instruments including the African Charter on Human and Peoples' Rights. The Ministry should also call upon human rights NGOs to fully facilitate human rights training in terms of providing both financial and human resources.

Visit to Windhoek Maximum Security Prison

At Windhoek Maximum Security Prison, the officer in charge of the prison, Chief Superintendent Malambo received the delegation. In a meeting with other officials from the Prison, the delegation was informed that Windhoek Maximum Security Prison was opened on 31st October 1963 and at the time it was meant for hardcore criminals and political detainees. Today the Ministry is trying to reclassify all the prisons in the country and Windhoek is earmarked to be the only maximum prison with a holding capacity of 900 inmates only, since it is estimated that altogether there are only about 600 hardcore criminals. Consequently, Windhoek Maximum Security Prison is being equipped with well-trained personnel and appropriate security systems. There are two hundred and sixty seven (267) prison officers presently working at this prison.

The Prison receives prisoners from Windhoek and Katutura Courts and presently the total number of inmates is one thousand three hundred and thirty five (1,335) and two (2) children. The prison is over crowded by three hundred and eighty two (382) males and three (3) females.

The Chief Superintendent of Windhoek prison reported that there are eleven (11) mentally disabled patients within the prison. Although this prison is not meant for such persons, there is only one mental hospital whose facilities are inadequate and as a result they use the prison facilities as an alternative. However, the prison officials are concerned by the fact that those patients are hardly visited by their psychiatric doctors.

The prison has workshops where prisoners work and train in various trades. They include metal, motor maintenance, tailoring and upholstery, woodwork; other projects

include literacy programs, bible study, sewing, laundry, candle making, agriculture, HIV/AIDS counselling, First Aid Courses, teamwork and adult literacy classes for those inmates that are illiterate.

Regarding the prisoners' health, there is a qualified medical doctor stationed at the headquarters to oversee matters relating to the health of inmates. There are small clinics situated within all the prisons headed by nurses who attend to minor ailments suffered by the inmates. A qualified medical doctor carries out monthly or weekly visits to attend to serious cases if any, and in some cases inmates are taken for treatment to the major national public hospitals. Prison officials acknowledged that there is a need to attach more doctors to the prisons, as presently there was only one doctor to about 5,000 inmates.

The Commissioner was also informed that persons sentenced to two years and above may be tested for HIV/AIDS on admission to the prisons. The test is not compulsory and the prisoners are provided with counselling both before and after the tests are carried out. Those inmates found to be HIV positive are given a special diet. The Chief Superintendent of Windhoek prison informed the delegation that whereas prisoners that are living with HIV/AIDS are not isolated those with highly infectious diseases are.

After the meeting we were taken around the prison grounds where we visited the prison cells, the female and juvenile sections, all the workshops and the projects, library, classrooms, medical dispensary, the kitchen and what was formerly the gallows - the gallows are not in use since the death penalty was abolished in Namibia. Generally, the state of the infrastructure in this prison were all right. The Commissioner was able to talk to some prisoners including persons who had been detained for illegal entry into the country. There were prisoners who claimed to have been on remand for long periods.

Ministry of Home Affairs

At the Ministry of Home Affairs, the Commissioner met with the Deputy Permanent Secretary of the Ministry of Home Affairs, Mr. Shiwedha, the Deputy Inspector General of Police, Mr. Ngiishililwa, the Commissioner for Refugees, Ms Elizabeth Negumbo and the Deputy Director of Immigration and Passports, Ms Kandetu.

Commissioner Chigovera introduced the African Commission, its activities and the purpose of the promotional mission. He drew the attention of the officials to the Concluding Observations of the African Commission that arose out of examining the Periodic Report of Namibia. He also informed them about the José Domingos Sikunda matter which is presently before the African Commission as a Complaint against Namibia.

The Deputy Permanent Secretary informed the delegation that there are eleven (11) Commissioners within the Ministry and that the Ministry is part of the Inter-Ministerial Committee of Human Rights.

The Deputy Inspector General of Police, Mr. Ngiishililwa briefed the Commissioner about the problems in the Caprivi and Kavango areas where UNITA rebels operate.

Regarding the Sikunda matter, the officials from the Home Affairs Ministry stated Sikunda being a foreigner, requested and was granted permanent residence in Namibia.

They stated that even though Sikunda has admitted that he is a UNITA representative, he has been allowed to enjoy his rights but within certain limitations; for instance, he is not at liberty to effect or carry out UNITA activities within Namibia.

In response, the Commissioner stated that while the African Commission is conscious of the government's need to protect its people, it is never the less concerned about the manner in which those people are handled. It should be noted that once the African Commission is informed about human rights violations being committed within a Member State, it is obliged to ask questions as to why and how such violations occurred.

The Commissioner for Refugees informed the Commissioner that there is an influx of Angolan refugees who form 95 percent of the refugee population in Namibia. The other 5 percent are from the Democratic Republic of Congo, Republic of Congo, Liberia, Sierra Leone, Cameroon, Uganda and Somalia.

Most of the refugees in Namibia are placed in the Camp at Osire while their applications for refugee status are being verified. Usually the verification process and other legal processes take a long time to reach completion. She reported that it has been observed that most of the persons that claim refugee status are in actual fact economic immigrants who want to stay in Namibia or want to move on to other countries. However, when conditions are not very good within the camps, such immigrants opt to go back to their respective countries. Others, however, try to marry Namibian citizens to avoid deportation.

She stated that whilst dealing with refugees, the Ministry observes the principles outlined in the 1951 Refugee Conventions, more especially the principle of non-refoulement. But in some cases refugees have continually abused the refugee regulations and in such instances, their cases are revisited, refugee status withdrawn and with the help of UNHCR a third country is recommended for the offending refugee.

On the whole, officials from the Ministry of Home Affairs stated that the Ministry does not suffer major problems except the lack of adequate logistics and limited human and financial resources, which consequently affects the ability of the Ministry to fully meet the humanitarian needs of the refugees. As such, the Refugee Department in the Ministry heavily depends on donor funds.

Office of the Ombudsperson

Commissioner Chigovera in his meeting with the Ombudsperson, Ms Bience Gawanas, introduced the African Commission and its activities. He briefed her about the purpose of the promotional visit and the officials met and some of the issues that had been discussed.

He expressed his interest in knowing the role of the Ombudsperson in the protection of human rights, how effective it is in carrying out this role especially if the mandate of the office does not go beyond making recommendations. The Commissioner also wanted to know how an ordinary person could access the office and whether there were regional offices. He also wanted to discuss ways in which the Ombudsperson's office and the African Commission could establish and maintain links.

The Ombudsperson informed the Commissioner that the Office of the Ombudsperson was established under the 1990 Constitution. She stated that prior to assuming the office in 1997, the office had been headed by two different persons. When she took over the office, she concentrated on building the capacity of the staff and the institution, introduced a case management system, data processing and tried to restructure the office. As head of the institution in 1997, she was the only permanent officer but today there are 17 permanent officers, 3 of whom are in charge of carrying out investigations.

She stated that access and effectiveness of her office heavily depends on expertise and the availability of resources. However, some of the officers within the office have been promoted within the civil service to work with the ombudsperson's office and yet they may not have the requisite expertise for those particular jobs.

She stated that the Act establishing the office created the traditional office meant to handle administrative problems/cases and not complaints related to human rights violations which is a relatively new area.

Now the Ombudsperson's focus is on strengthening the human rights capacity of the office and dealing with complaints effectively and efficiently in terms of approaches to investigations. She acknowledged that although the Act does not give the office the power to prosecute cases, it does have strong investigative powers. Furthermore, upon issuing recommendations that certain action be taken, the office has the mandate to follow up and ensure that action is actually taken by the relevant authorities. But usually when presented with a complaint against a particular Ministry or government official, she approaches the offending authorities to try and discuss the matter rather than confront them. But even though government usually welcomes recommendations from the Ombudsperson's office and acts on them, there are still existing challenges that the office has to overcome.

On the office's effectiveness, she stated that while the office is not part of government as such, it does have links to the Ministry of Justice which provides the budget for the office. This makes the office some kind of Directorate under the Ministry of Justice and except for the Ombudsperson herself, all the other members of staff are recruited by the civil service. She noted that because of the relationship with government the public tends to question how effective the office of the Ombudsperson is in handling complaints. She made a comparison with other Ombudsperson systems where they have their own budgets, recruit or at least participate in the recruitment of officers. She stated that her office is looking into the possibility of carrying out a review in order to assess the performance of the office over the years.

Except for the central office which is based in Windhoek, the Ombudsperson's office has no regional offices yet, but an assessment was carried but whose results indicated that there was a need to set up offices upcountry in order to strengthen the central office. The Ombudsperson indicated that she is aware that people upcountry need the services of her office and in this respect the office sends its investigators upcountry. Occasionally, the office of the Ombudsperson also holds clinics upcountry. In terms of accessibility, the office can be reached and written complaints are accepted as well those made in person or by telephone and fax.

Regarding the recently examined Namibian periodic report she informed the Commissioner that her office did not make an input to the report. The Commissioner

informed her that the African Commission usually recommends governments to consult NGOs as well as all governmental institutions including the Ombudsperson's offices when preparing reports.

On the question as to whether there are officers that are exempt from her office's investigations, she stated that her mandate is quite broad and covers "all officials appointed or elected in administering organisations of government, ministries, police and defence etc ...". She noted however, that the judiciary is exempt from investigations in so far as their judicial functions are concerned; the Ombudsperson's office does not interfere with court decisions but encourages persons that are dissatisfied with decisions to go through the appeals procedures. But in cases where the complaints relate to administrative "*bottlenecks*" within the judiciary she often refers the matter to the offices of the Registrars or Masters of Courts to enquire into the matter.

University of Namibia

Present during the meeting with the Dean of the Faculty of the University of Namibia, Professor Hinz and Deputy Dean, Mr. Amoo, were Mrs Chiku Muchombu from the Human Rights and Documentation Centre of the University, Dr. Worku a consultant from the Office of the High Commission on Human Rights, Mr Matswetu from the Justice Training Centre and a Professor Lombard from the Ecumenical Institute of Namibia.

Commissioner Chigovera explained the activities of the African Commission and the purpose of the promotional mission. He noted that University of Namibia as an NGO with observer status with the African Commission should endeavour to increase its participation in the activities of the African Commission.

The Dean of the Faculty of Law expressed his embarrassment at the fact that the University as an Institution enjoying observer status with the African Commission had not yet submitted its report as required and promised to do so as soon as possible. He informed the delegation that the University with the assistance of Dr. Volku was contemplating holding joint workshops with the African Commission on country reporting to regional and international bodies and the evaluation of human rights violations in Namibia. It is envisaged that the Workshop on periodic reporting by the country would target government officials that are involved in writing reports that are submitted to the regional and international mechanisms while the workshop on evaluation of human rights violations within the country would be geared towards human rights NGOs. The Dean requested the African Commission's participation in these activities when they take place.

The Head of the Human Rights and Documentation Centre informed the Commissioner that despite inadequate resources, the Centre has been able to put up a collection of publications on human rights and that direct access is given to users. She reported that the Centre carries out training in Internet use and as such has two computers with Internet facilities that can also be used by visitors to the Centre. The Centre occasionally organises displays of its materials in collaboration with NGOs.

Mr. Maswetu from the Justice Training Centre explained that in 1997, the Centre extended its training programmes to law enforcement agencies as a result of increased reports of human rights violations. They also extended their training to the judiciary and

legal practitioners whose only knowledge of human rights was basically that acquired during legal training at the University.

On the question of a follow up mechanism following delivery of decisions by the African Commission on complaints brought against Member States, the Commissioner informed the meeting that the African Commission does try to follow up but on the whole countries are trying to improve their human rights record and therefore try as much as possible to adhere to the African Commission's recommendations and decisions.

The Commissioner requested the University to urge the government of Namibia to ratify the Protocol on the Establishment of an African Court as only four countries had ratified it.

With respect to the workshop evaluating the country on its human rights record, the Commissioner advised that it would be good for the various NGOs and the University to agree with the government on the approach to the evaluation procedures as human rights issues are very emotive issues. He stated that this idea is welcome especially as it would assist the African Commission in evaluating human rights within the country. Presently the African Commission evaluates the human rights situations in its Member States by way of the reports submitted by Member States, and NGO reports which are usually quite critical with allegations that are sometimes not substantiated. He stated that while the African Commission may raise such unsubstantiated allegations with the government concerned during examination of their country report, it is always better that consultations take place at national level before the State report is submitted to the African Commission. The Commissioner clarified that parallel reports submitted by NGOs are supposed to fill in those gaps on important issues omitted by governments. Such reports only provide information which the African Commission is at liberty to use or not since its mandate is to consider State Reports only. The Commissioner also noted that most of the NGO reports reflect the situation of human rights violations in terms of civil and political rights rather than economic, social and cultural rights and advised that such reports should endeavour to reflect the whole human rights situation in the country including the state of economic, social and cultural rights.

Legal Aid Centre

The Commissioner met with the Director of the Legal Aid Centre, Mr. Clement Daniels, the officer in charge of the AIDS Law Project and the Juvenile Justice Coordinator.

He told them about the Commission's activities and the purpose of the promotional mission. He also told them about the government officials he had met and the issues that he had discussed with them and which NGOs he intended to meet for the purpose of his mission. The Commissioner informed the Director that the African Commission had examined Namibia's periodic report at its just concluded session. He also described the relationship that exists between the African Commission and some NGOs and National Human Rights Institutions and encouraged the Legal Aid Centre to submit an application for observer status with the African Commission.

The Director informed the delegation that the Legal Aid Centre was established in 1988 in response to the human rights violations that the Namibian people had suffered before independence particularly in the northern part of the country.

He informed him that the Legal Aid Centre focuses on human rights cases unlike the Legal Aid Board of Government that deals with maintenance and criminal cases. The Centre also carries out a number of activities and they include -: legal education with a focus on the Namibian Constitution, specifically the bill of rights therein, undertake researches especially on gender inequality, work on juvenile justice in terms of assisting child offenders and more recently have initiated programs relating to rights of people living with HIV/AIDS.

The Director of the Centre was of the opinion that since 1995 there had been a general deterioration in the attitude of the Namibian government towards human rights protection. For instance, the Centre recorded 136 cases of torture by police and other security forces. He stated that there is a marked increase in violations of the rights of people in custody and despite reports of these violations, the government of Namibia has not taken any action against the violators.

The Director noted that because most human rights NGOs work in the areas of protecting civil and political rights, inevitably government is often alleged to have committed human rights violations and thus it generally mistrusts and is suspicious of NGOs and civil society groups. He stated that he was aware that the African Commission had examined the Namibian Periodic Report and of the statements made by the State Representative with regard to NGOs in Namibia. He acknowledged that the relationship between government and human rights NGOs in the country on the whole was not very good and stated that for instance the hostility that exists between the Namibian Government and the Namibian Society for Human Rights Society is evident. He stated that such an environment coupled with the fact that there are very few active human rights NGOs in the country negatively impacts on the achievements of NGOs in the area of human rights.

He commented that the Inter-Ministerial Committee is a government body charged with dealing with human rights issues but this Committee has avoided working with human rights NGOs and is therefore seen as ineffective in carrying out its mandate.

The Director informed the Commissioner that the Legal Aid Centre does work fairly well with some government departments with respect to some of the Centre's projects; for instance, the AIDS Law and Juvenile Justice projects. However, they face problems when the Centre sues government departments and ministries in cases relating to allegations of human rights violations. He stated that some government officials have taken such litigation personally; and so what has to be dealt with in such instances is how to depersonalise litigation matters.

Commissioner Chigovera recommended that it is very important that NGOs working to promote and protect human rights have a good working relationship with government in order to achieve success in their work for the benefit of the populace.

The Commissioner commended the organisation for the good work they seem to be doing in protecting human rights and reiterated his proposal that the Centre apply for observer status with the African Commission. He informed them that one of the ways to address the concerns of NGOs relating to their relationships with governments is for them to bring them to the attention of the Commission during its public sessions and this can only be done by NGOs that enjoy observer status with the Commission. In such cases, the African Commission will be obliged to take the matter up with the country

concerned. He also proposed that where there are serious human rights violations the matter could also be addressed to the African Commission through its complaint system.

The Commissioner also requested that the Centre provide the African Commission with its reports and publications as these may be good sources of information where the African Commission requires it.

The Commissioner also suggested that human rights NGOs should endeavour to promote and protect economic, social and cultural rights rather than concentrate on the protection of civil and political rights only. The Director agreed that this was a valid suggestion and was quick to add that the Legal Aid Centre had on occasion handled clients with matter relating to land rights, the right to proper health care especially in cases of people living with HIV/AIDS and the right to work and food.

National Society for Human Rights

The delegation met with the Executive Director of the National Society for Human Rights, Mr. Phil Ya Nangoloh and his Administrative Officer, Mr. Zen Mnakapa. The National Society for Human Rights enjoys observer status with the African Commission.

The Executive Director informed the delegation about the activities of the Society which include human rights advocacy and monitoring and civic education. He stated that the Society has three (3) regional monitoring offices in Rundu, Opuwo, Oshakati and were soon to open offices in the Katima Mulilo region. Field monitoring officers who carry out research and investigations into human rights violations run the regional monitoring offices. These officers are trained for three months before they begin their work using the approach used by the organisation the "*name and shame approach*". This involves compiling reports of human rights violations which are then forwarded to the Head office in Windhoek who then issue press statements based on those reports to local and international media, embassies and governmental organisations. The Executive Director however remarked that there had been a reduction in reports of human rights violations from the northern part of the country that is inhabited mainly by UNITA rebels and sympathisers.

On the issue of their relationship with the government, the Executive Director informed the Commission that the organisation had a fairly good working relationship with some government departments, for instance the Department for basic education in the Ministry of Education, Police and the Ministry of Prisons and Correctional Services. He noted however that the Society did not have good relations with State House, specifically the President who, in response to reports of human rights violations, takes matters personally and makes unwarranted remarks about the personalities in the organisation.

While concluding the meeting Commissioner Chigovera advised that the primary goal of NGOs is for the general population of Namibia to realise their human rights, which should also be the major goal of the government. It is therefore important that NGOs avoid personalisation of issues and fuelling of clashes between each other and ensure that communication exists between the government and the National Society and other players in the field of human rights protection.

NGOs

The meeting with NGOs was arranged such that a number of NGOs were met in one meeting. The delegation thus met with the representatives from the following NGOs :-

1. Namibian NGO Forum (NANGOF)
2. Southern African Human Rights NGO Network (SAHRINGON)
3. Working Group for Indigenous Minorities
4. Breaking the Wall of Silence
5. Women in Solidarity

The representative of NANGOF informed the delegation that the organisation was founded in 1991. NANGOF is an umbrella organisation of 98 NGOs operating in various fields including education, human rights and development. Its major activities are capacity building, networking and advocacy.

The representative of Breaking the Wall of Silence stated that the organisation was established to address the atrocities that were committed by SWAPO during the struggle against apartheid. During the time and to date non SWAPO supporters were stigmatised and branded as enemy agents which they were not. Breaking the Wall of Silence as an organisation advocates that the present Namibian government that is mainly SWAPO admit that it was mistaken in alleging that non-SWAPO supporters were enemy agents and in so doing heal emotional scars that were caused by such allegations. However, the organisation has been met with silence on part of government which does not seem to want to initiate dialogue on the matter.

The co-ordinator of the Working Group for Indigenous Minorities, Mr. Axel Thoma stated that the organisation is a networking organisation for the Southern African region and particularly works with San groups in Southern Africa, that is, South Africa, Namibia, Botswana, Angola, Zambia and Zimbabwe. The organisation is not meant to be an implementing organisation but does so to fill in the gap of lack of resources and as such also works in the area of human rights education, development issues and tourism.

Mr. Thoma informed the delegation that government has a positive attitude towards indigenous and minority groups especially the Ministry of Education and has made an effort to involve these groups in the positions of decision making bodies and politics of the country. On the land question and minority groups, there are administrative "bottlenecks" when it comes to giving the San land. There is a widespread negative attitude among the local communities regarding the San and in the northern part of the country they are enslaved and in some cases there are reports of rape of the San women.

Currently there is a plan by government to move 22,000 refugees from Osire into bushman land and the organisation believes this is not a good move.

The representative of SAHRINGON stated that the organisation is a network of human rights NGOs within the Southern African region that is involved in networking advocacy, promotion and protection of human rights. There are 15 members in the network and its secretariat in Namibia is NANGOF.

Women in Solidarity was established in 1989 to support victims of violence particularly people that have suffered domestic violence and rape by counselling both the victims and the perpetrators of the violence. The organisation educates the victims about their rights

and also educates both women and men on the effects of violence orchestrated towards women. The organisation participated in the drafting of the Rape Act and Maintenance Bill and also organises education talks on the subject of violence against women in schools, prisons, police and churches.

Commissioner Chigovera informed the members present about the status of the Draft Protocol on the Rights of Women in Africa and urged them especially those organisations working on the rights of women to actively participate in the work on its drafting. He noted that most of the NGOs present did not have observer status with the African Commission and urged them to apply for observer status, as this would enhance their working relationship with the African Commission.

Regarding problems that NGOs face, the members present felt that government was not doing enough to promote human rights within the country. Instead the government and its organs were committing human rights violations including, muzzling a free press, intimidating gay people, police brutality etc. As a result, relations between NGOs that criticise the human rights record of the country and government have soured.

The Commissioner encouraged human rights organisations to use legal means to tackle some of the problems they face or in the alternative seek support from existing structures like the office of the Ombudsperson. He stressed that it is pertinent that NGOs establish a good working relationship with the government of Namibia. Parties may disagree on issues but the channels of communication and discussion should always be kept open because this can only serve to better facilitate their human rights work for the benefit of the Namibian population.

Minister of Justice

Following his return into office, it was arranged that the delegation have a brief meeting with the Minister of Justice on the last day of the promotional mission. The Commissioner briefed him on the discussions that the delegation had held with the various government officials and representatives of NGOs.

Commissioner Chigovera drew the Minister's attention to the Concluding Observations that arose out of the examination of the Namibian report by the African Commission. He told him that Namibia had not yet ratified the African Charter on the Rights and Welfare of the Child and the Protocol Establishing an African Court and appealed to the Minister to urge his government to ratify these instruments.

The Minister informed the delegation that during the liberation struggle he had worked with human rights NGOs as a human rights activist and now that he is in government knows how it feels being on either side. He felt that some NGOs in Namibia are not genuine human rights organisations but fronts for opposition organisations. He observed that Namibia is trying to do its best with regard to protecting human rights but there are sometimes instances when government officials violate human rights and in such cases the violators are usually apprehended.

On the issue of respect for a free press, he was of the opinion that this right is respected but some newspapers do not report responsibly and sometimes the government is forced to take action as was the case of The Namibian newspaper.

In his response the Commissioner advised that certain matters are better handled using legal avenues as then the responsibility of determining the matter would be in the hands of an impartial court.

Media Institute for Southern Africa

At the Media Institute for Southern Africa (MISA), the delegation met with the Regional Director of the Institute, Mr. Luckson Chipare whose activities as the Regional Director are around the right to information and expression. The Commissioner briefed him about the African Commission, its mandate, composition and activities. He informed Mr. Chipare that MISA could enjoy a better working relationship with the African Commission if they had observer status with the Commission.

He also told him that Namibia had not yet ratified the African Charter on the Rights and Welfare of the Child and the Protocol on the Establishment of an African Court and urged his organisation to advocate for government to ratify these instruments as they seek to protect the most vulnerable people on the continent.

The Director of the Institute was also informed about the country reporting procedures and how his organisation can play a meaningful role in the process. The Commissioner explained to him how governments operate and how organisations such as the Institute can approach governmental structures and work with them in the promotion and protection of human rights.

The Director was particularly interested in the communication procedure especially as it relates to the problem faced by the press in Swaziland following the issuance of King's Decree.

Press Conference

At the end of the Promotional Mission, Commissioner Chigovera held a press Conference and in attendance were -:

1. Media Institute for Southern Africa;
2. Media Institute for Southern Africa - Namibia; and
3. Namibia Press Association.

The delegation was informed that Friday afternoons are not convenient for meetings with media houses since most of them close for the weekend and the press people travel upcountry on Friday.

At the Press Conference the Commissioner explained to the members of the press present about the African Commission and its activities and the purpose of the promotional mission that he had just undertaken. He told them that while this particular mission to Namibia was not an investigative or fact-finding mission, the African Commission, when it deems it fit, could undertake such missions to a Member State.

He informed the press that in his meetings with the various authorities from both government and human rights organisations, they had discussed issues and exchanged views relating to implementation of human rights under the African Charter in the country. The Commissioner was also able to follow up on issues that arose from examining Namibia's first periodic report to the African Commission. During his

discussions with the NGOs, he informed the members of the press that he had stressed the importance of being able to communicate and work with government organs. In the same way he called upon the press to exercise some responsibility when reporting and where aggrieved, resort to the legal processes and avenues available in the country.

He informed the Press that the government of Namibia had welcomed the mission to the country and facilitated it and that frank and open discussions were held with the various authorities.

An interview had been arranged for the Commissioner with the National Television - Namibia Television but unfortunately they did not turn up.

Conclusion

During the week that we met and discussed with officials from the government and NGOs in Namibia, the delegation indicated that the African Commission was willing, through the Commissioner responsible for the Namibia, to cooperate and assist and participate in their activities. They should therefore feel at liberty to invite the Commission to participate in those activities that are in line with the Commission's mandate. The delegation also stressed that authorities should continue informal discussions and consultations with the Commissioner responsible for the country.

Outcomes/Recommendations

1. The Government of the Republic of Namibia undertook to accelerate procedures towards the ratification of the Protocol on the Establishment of the African Court on Human and Peoples' Rights and finalise the process of ratifying the African Charter on the Rights and Welfare of the Child which was already underway.
2. The Government of the Republic of Namibia has undertaken to address issues that were raised in the Concluding Observations and report on action taken in its next periodic report.
3. The Government of the Republic of Namibia has undertaken to take steps towards the establishment of a National Human Rights Institution.
4. The Mission recommends that the African Commission evaluate NGOs enjoying observer status periodically to verify whether those organisations continue to fulfil the criteria prescribed in the *"Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations working in the field of Human and Peoples' Rights with the African Commission on Human and Peoples' Rights"*.
5. The Mission recommends that the Commission develops a programme for training human rights NGOs in Namibia on the ACHPR procedures for the submission of communications and the handling of communications by the Commission.

6. The Mission recommends that the African Commission develops and establishes working relationships with Sub Regional institutions in Africa like the Southern African Development Community (SADC) and offices of the Ombudsman.
7. The Mission also urges the African Commission to establish and maintain links with the Judiciary in Africa and involve them in the activities of the African Commission; for instance through, the exchange of reports and decisions.

Officials Met by the Delegation

1. **Ministry Of Justice**
 - Minister of Justice
 - Permanent Secretary of the Ministry of Justice Ms. L.N. Shapwa
 - Administrative Assistant to the Permanent Secretary, Mr. P. Like
2. **Office of the Attorney General**
 - Attorney General of Namibia - Honourable Pendukeni Iivula-Ithana
 - Mr. Festus Mbandeka
 - Mr. Sacky Shangala
3. **Ministry of Foreign Affairs, Information and Broadcasting**
 - Deputy Permanent Secretary Regional and Bilateral Affairs Department, Foreign Affairs Ambassador Nicky P. Nashandi
 - Two officers
4. **Ministry For Women Affairs and Child Welfare**
 - Minister for Women Affairs and Child Welfare, Honourable Netumbo Nandi-Ndaitwah
 - Dr. Ngifindaka
 - Ms A. Mushimba
 - Ms. S. Usiku
5. **Ministry of Prisons and Correctional Services**
 - Commissioner of Prisons, Mr. Evaristus Shikongo
 - Deputy Commissioner (Special Advisor), Mr J.W. Nyoka
 - Deputy Commissioner, Head of Functional Services, Mr J. Fwafwa. Mabakeng
 - Assistant Commissioner, Head of Personnel Services, Mrs A.T. Amutenya
 - Senior Superintendent of Prisons, Legal Support, Mr R.S. Malobela
 - Officer in charge of Windhoek Prison, Chief Superintendent, Malambo and other prison officials
6. **Ministry of Home Affairs**
 - The Deputy Permanent Secretary of the Ministry of Home Affairs, Mr. M. Shiwedha
 - The Deputy Inspector General of Police, Fritz Ngishililwa
 - The Commissioner for Refugees, Ms. Elizabeth Negumbo
 - The Deputy Director of Immigration and Passports, Ms. L. Kandetu

7. The Inter-Ministerial Committee of Human Rights

- The Chairperson, Mr. Daniel Utoni Nujoma
- The Secretary
- Head Legal Administration, Mr. Simataa Limbo
- Other officials

8. Supreme Court

- The Chief Justice of Namibia, Justice Johan Strydom

9. Parliament

- Speaker of Parliament, Honourable Dr. P. Tjitendero
- Legal Counsel, Mr. Moses K. Ndjarakana
- Legal Counsel, Ms. Dee Sauls
- Legal Counsel, Mr. Adolf Denk
- Special Assistant to the Speaker, Ms. Isabella Wellman

10. Office of the Ombudsperson

- The Ombudsperson, Ms. Bience P. Gawanas

11. University of Namibia

- Dean, Faculty of Law, Prof. Manfred Hinz
- Deputy Dean, Faculty of Law, Mr Sam Amoo
- Deputy Director, Justice Training Centre, Mr Glen Matswetu
- Documentalist, Human Rights and Documentation centre, Mrs Chiku M. Mchombu
- Director, Ecumenical Institute of Namibia, Prof. C Lombard
- Consultant, Office of the High Commission for Human Rights, Dr. M. Worku

12. Legal Aid Centre

- The Director of the Legal Aid Centre, Mr. Clement Daniels
- Officer in charge of the AIDS Law Project
- Juvenile Justice Coordinator.

13. National Society for Human Rights

- The Executive Director of the National Society for Human Rights, Mr. Phil Ya Nangoloh
- The Administrative Officer, Mr. Zen Mnakapa

14. NGOs

- Namibian NGO Forum (NANGOF)
- Southern African Human Rights NGO Network (SAHRINGON)
- Working Group for Indigenous Minorities
- Breaking the Wall of Silence
- Women in Solidarity

15. Media Institute for Southern Africa

- The Regional Director of the Media Institute for Southern Africa, Mr. Luckson A. Chipare

16. Press Conference

- Media Institute for Southern Africa
- Media Institute for Southern Africa - Namibia,
- Namibia Press Association