

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

MISSION TO THE REPUBLIC OF NAMIBIA

July - August 2005



AFRICAN COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS



IWGIA

INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS



REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

MISSION TO THE REPUBLIC OF NAMIBIA

26 July – 5 August 2005

The African Commission on Human and Peoples' Rights adopted this report
at its 38th Ordinary Session, 21 November – 5 December 2005



AFRICAN COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS

2008



INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP
ON INDIGENOUS POPULATIONS/COMMUNITIES:
MISSION TO THE REPUBLIC OF NAMIBIA,
26 JULY – 5 AUGUST 2005

© Copyright: ACHPR and IWGIA

Typesetting: Uldahl Graphix, Copenhagen, Denmark

Prepress and Print: Litotryk, Copenhagen, Denmark

ISBN: 9788791563324



Distribution in North America:
Transaction Publishers
390 Campus Drive / Somerset, New Jersey 08873
www.transactionpub.com



**African Commission on Human
and Peoples' Rights (ACHPR)**

Kairaba Avenue - P.O.Box 673, Banjul, The Gambia
Tel: +220 4377 721/4377 723 - Fax: +220 4390 764
achpr@achpr.org - www.achpr.org



**International Work Group
for Indigenous Affairs**

Classensgade 11 E, DK-2100 Copenhagen, Denmark
Tel: +45 35 27 05 00 - Fax: +45 35 27 05 07
iwgia@iwgia.org - www.iwgia.org

This report has been produced with financial support from
the Danish Ministry of Foreign Affairs

TABLE OF CONTENTS

ABBREVIATIONS 7 - 8

ACKNOWLEDGEMENTS 9

PREFACE 10

EXECUTIVE SUMMARY 13

MAP OF NAMIBIA 27

PART I

1. INTRODUCTION 28

2. PREPARATION OF THE MISSION 29

3. TERMS OF REFERENCE OF THE MISSION 30

4. BRIEF HISTORY OF NAMIBIA 31

5. NAMIBIA'S INDEPENDENCE 32

6. GEOGRAPHY 32

7. POPULATION 33

8. ETHNIC COMPOSITION 34

9. ADMINISTRATIVE DIVISIONS 34

10. LANGUAGE AND RELIGION 34

11. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS 34

12. PREVIOUS MISSIONS TO THE COUNTRY 35

PART II

13. INDIGENOUS POPULATIONS IN NAMIBIA: A BRIEF PROFILE OF THE SAN AND THE HIMBA INDIGENOUS GROUPS.....	36
14. THE SAN COMMUNITIES.....	37
15. THE HIMBA.....	40

PART III

16. INSTITUTIONS AND INDIVIDUALS MET DURING THE MISSION.....	43
17. COURTESY CALL TO THE UNDER-SECRETARY TO CABINET.....	44
18. MEETING WITH THE MINISTRY OF JUSTICE.....	47
19. MEETING WITH THE SPEAKER OF THE NATIONAL ASSEMBLY.....	50
20. MEETING WITH THE MINISTRY OF EDUCATION.....	52
21. MEETING WITH THE MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION.....	56
22. MEETING WITH WINDHOEK-BASED NGOS.....	62
23. MEETING WITH THE LAW SOCIETY OF NAMIBIA.....	64
24. MEETING WITH THE OMBUDSMAN OF NAMIBIA.....	67
25. MEETING WITH THE MINISTRY OF AGRICULTURE.....	68
26. MEETING WITH THE UNIVERSITY OF NAMIBIA – HUMAN RIGHTS AND DOCUMENTATION CENTER.....	70

PART IV

27. MEETING WITH SAN COMMUNITIES.....	73
28. MEETING WITH RESIDENTS OF MASAMBO VILLAGE.....	73
29. MEETING WITH RESIDENTS OF OMEGA III VILLAGE.....	79
30. MEETING WITH RESIDENTS OF MUSHANSHANI VILLAGE.....	83
31. MEETING WITH THE MANAGEMENT OF THE NYAE NYAE CONSERVANCY.....	87
32. MEETING WITH RESIDENTS OF ROUTS POS VILLAGE.....	92
33. MEETING WITH THE STAFF AND MANAGEMENT OF NꞑA JAQNA CONSERVANCY.....	93

34. MEETING WITH RESIDENTS OF MKATA VILLAGE	96
35. MEETING WITH WIMSA GOBABIS BRANCH	98
36. MEETING WITH RESIDENTS OF SKOONHEID FARM	101
37. MEETING WITH THE HONOURABLE MP ROYAL /UI/O/OO	104

PART V

38. THE DELEGATION'S FINDINGS AND OBSERVATIONS	108
39. RECOGNITION	109
40. LAND AND RESOURCE RIGHTS OF THE SAN	109
41. STEREOTYPING AND DISCRIMINATION	115
42. POVERTY AND UNEMPLOYMENT	116
43. CULTURE AND MODERNISATION	117
44. NUTRITION AND HEALTHCARE	118
45. THE SAN AND EDUCATION	119
46. SAN TRADITIONAL AUTHORITIES	123
47. POLITICAL REPRESENTATION	127

PART VI

48. CONCLUSIONS AND RECOMMENDATIONS	128
49. EDUCATION	129
50. TRAINING	130
51. LAND RIGHTS	130
52. TRADITIONAL LEADERSHIP AND POLITICAL REPRESENTATION	130
53. HEALTH	131
54. EMPLOYMENT	131
55. HUNGER	131
56. DISCRIMINATION	132
57. RECOGNITION OF INDIGENOUS PEOPLES	132
58. SUBMISSION OF REPORTS	132
59. TO THE NGOS	132
60. TO THE INTERNATIONAL COMMUNITY	133

ABBREVIATIONS

ACHPR – African Commission on Human and Peoples’ Rights

ACRWC – African Charter on the Rights and Welfare of the Child

African Charter – African Charter on Human and Peoples’ Rights

AIDS – Acquired Immune Deficiency Syndrome

AU – African Union

CAT – Convention Against Torture

CBNRM – Community-Based Natural Resource Management

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

CERD – Convention on the Elimination of All Forms of Racial Discrimination

CGSARPA – Convention Governing the Specific Aspects of Refugee Problems in Africa

CRC – Convention on the Rights of the Child

EML – Educationally Marginalised Learners

EMU – Emergency Management Unit

HIV – Human Immunodeficiency Virus

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

IDs – Identification Documents

IDPs – Internally Displaced Persons

ILO – International Labour Organisation

LAC – Legal Assistance Center

MLRR – Ministry of Lands, Resettlement and Rehabilitation

MP – Member of Parliament

NDC – Namibia Development Corporation

NDF – Namibian Defence Force

NGO – Non-Governmental Organisation

OAU – Organisation of African Unity

OP-ICCPR – Optional Protocol to the International Covenant on Civil and Political Rights

PS – Permanent Secretary

SADC – Southern African Development Community

SADF – South African Defence Force

SFF – Special Field Force

SWAPO – South West African People's Organisation

UN – United Nations

USAID – United States Agency for International Development

VSP – Village Schools Project

WGIP – Working Group on Indigenous Populations/Communities

WIMSA – Working Group on Indigenous Minorities in Southern Africa

ACKNOWLEDGEMENTS

The African Commission on Human and Peoples' Rights (ACHPR or African Commission) would like to thank the Government of the Republic of Namibia for inviting its Working Group on Indigenous Populations/Communities (WGIP or Working Group) to the country. The African Commission would like to thank, in particular, the Ministry of Justice for facilitating the programme of the delegation.

A special appreciation is extended to Mr. Titus Iipumbu, Chief Legal Officer in the Ministry of Justice for his tireless efforts to ensure the success of the mission. A special note of appreciation is also extended to the government officials who found time to meet with the delegation of the Working Group of the African Commission in spite of their busy schedule. The African Commission is grateful to the authorities for their hospitality and support during the period of the mission.

The delegation would also like to thank Mr. Johnny Akweenda for driving the delegation thousands of kilometers across the country to meet with various indigenous communities.

The African Commission would like to extend its appreciation to the civil society organisations that assisted it to organise the mission and would in particular like to thank Mr. Joram | Useb of the Working Group on Indigenous Minorities in Southern Africa (WIMSA) - Namibia.

PREFACE

The African Commission on Human and Peoples' Rights (ACHPR or African Commission), which is the human rights body of the African Union, has been debating the human rights situation of indigenous peoples since 1999. Indigenous peoples are some of the most vulnerable and marginalized groups on the African continent, and their representatives have since the 29th Ordinary Session of the African Commission in 2001 participated in the ACHPR's sessions. The indigenous representatives have given strong testimonies about their situation and the human rights violations they suffer from. Their message is a strong request for recognition and respect as well as a call for improved protection of their civil, political, economic, social and cultural rights. It is also a request for the right to live as peoples and to have a say in their own future, based on their own culture, identity, hopes and visions. Indigenous peoples, moreover, wish to exercise these rights within the institutional framework of the nation-state they belong to. The African Commission has responded to this call. The African Commission recognizes that the protection and promotion of the human rights of the most disadvantaged, marginalized and excluded groups on the continent is a major concern, and that the African Charter on Human and Peoples' Rights must form the framework for this.

In order to achieve a better basis on which to advance discussions and formulate recommendations, the African Commission set up a Working Group on Indigenous Populations/Communities (Working Group) in 2001. The Working Group then comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one international expert on indigenous issues. The Working Group implemented its initial mandate by producing the comprehensive document "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa (the full report can be downloaded

from <http://www.achpr.org>). The report was adopted by the African Commission in November 2003, and published in a book format in 2005. The report is the African Commission's official conceptualisation of indigenous peoples' human rights in Africa.

In 2003, the Working Group was given the mandate to:

- Raise funds for the Working Group's activities, with the support and cooperation of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society and indigenous communities) on violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

On the basis of this mandate, the Working Group has developed a comprehensive activity programme. This programme includes undertaking country visits, organising sensitisation seminars, cooperating with relevant stakeholders and publishing reports, all with a view to protect and promote indigenous peoples' rights in Africa.

This report is part of a series of country-specific reports produced by the Working Group, and adopted by the African Commission on Human and Peoples' Rights. These country-specific reports emanate from the various country visits undertaken by the Working Group, all of which have sought to engage with important stakeholders such as governments, national human rights institutions, NGOs, intergovernmental agencies and representatives from indigenous communities. The visits have sought to involve all relevant actors in dialogue on indigenous peoples'

human rights, and to inform about the African Commission's position. The reports not only document the Working Group's visits, but are also intended to facilitate constructive dialogue between the African Commission, the various African Union member states, as well as other interested parties.

To date, the Working Group has undertaken country visits to Botswana, Burundi, Central African Republic, Gabon, Namibia, Niger, Libya, Republic of Congo and Uganda. These country visits have been undertaken during the years 2005-2007, and it is planned that the reports will be published once adopted by the African Commission. Hopefully, the reports will contribute to raising awareness of indigenous peoples' situation in Africa, and prove useful for establishing dialogue and identifying appropriate ways forward for improving indigenous peoples' situation in Africa.

It is hoped that, via our common efforts, the critical human rights situation of indigenous peoples will become widely recognized, and that all stakeholders will work to promote and protect indigenous peoples' human rights in their respective areas.

Andrew R. Chigovera

Former Commissioner

Former Chairman of the African Commission's
Working Group on Indigenous Populations/Communities

EXECUTIVE SUMMARY

Introduction

The African Commission's Working Group on Indigenous Populations/Communities (Working Group) undertook a mission to the Republic of Namibia from 26 July – 5 August 2005. The delegation of the Working Group comprised:

- Commissioner Andrew Ranganayi Chigovera – Member of the African Commission and Chairperson of the Working Group on Indigenous Populations/Communities; and
- Dr. Naomi Kipuri – Member of the Working Group.

The Mission was supported by Mr. Robert Eno, Legal Officer of the Secretariat of the African Commission on Human and Peoples' Rights.

Objectives of the Mission

The general aim of the mission was to execute the mandate of the Working Group and of the African Commission. The specific objectives of the mission were inter alia, to:

- Gather information on the situation of indigenous populations in Namibia;
- Engage the Government of the Republic of Namibia in dialogue on the situation of indigenous populations in particular and its relationship with the African Commission as a whole;
- Engage civil society regarding its role in the promotion and protection of the rights of indigenous populations in Namibia; and
- Visit and discuss with indigenous communities to understand the problems, if any, affecting the effective enjoyment of their human rights.

Brief History of Namibia

Germany annexed South-West Africa (now Namibia) in 1885 in line with agreements made at the Berlin Conference. During the First World War, the surrender of the German forces in South-West Africa to the Army of the Union of South Africa in 1917 marked the beginning of Namibia's domination by South Africa.

With the adoption of the Treaty of Versailles in 1919, German South-West Africa was declared a mandate of the League of Nations under South African administration. The United Nations (UN) withdrew the mandate from South Africa in 1966. South Africa refused to accept to hand its control over the country to the UN. The South-West African People's Organisation (SWAPO), under the leadership of Sam Nujoma, then started an armed liberation struggle. The diplomatic turmoil between the UN and South Africa and the armed struggle of SWAPO lasted for 23 years. On November 11, 1989 the first free elections to the Constitutional Assembly were held. SWAPO won the elections, gaining 57% of the votes. In 1990, the constitution was changed. Sam Nujoma became President and Namibia became the 151st member of the United Nations. In 1994, Walvis Bay, Namibia's only seaport of economic importance, was handed over by South Africa - the last step towards the independence of Namibia.

Geography

With an area of approximately 824,000 square km, Namibia is more than triple the size of Great Britain. Border countries include Angola to the north (1,376 km long), Botswana to the east (1,360 km long), South Africa to the south (855 km long) and Zambia to the north-east (233 km long). The west is boarded by the Atlantic Ocean. The north-to-south length of the country is 1,500 km, while the east-to-west width is around 600 kilometers in the south and 1,100 kilometers in the north. The population density is very low (1.8 million people), amounting to 2.2 inhabitants per square km. With the exception of the border rivers - Orange in the south and Kunene, Okavango and Zambezi in the north - there are only dry rivers in Namibia.

Population and Ethnic Composition

The country has a population of about 1.8 million. Namibia's population is made up of 87.5% Africans, 6% Whites and 6.5% mixed. About 50% of the population belongs to the Ovambo tribe and 9% to the Kavango tribe. Other ethnic groups include the Herero 7%, Damara 7%, Nama 5%, Caprivian 4%, San 2%, Baster 2% and Tswana 0.5%.

Administrative Divisions

Namibia is divided into 13 administrative regions, namely: Caprivi, Erongo, Hardap, Karas, Khomas, Kunene, Ohangwena, Okavango, Omaheke, Omusati, Oshana, Oshikoto and Otjozondjupa.

International Human Rights Obligations

The Republic of Namibia is a State Party to a number of international human rights instruments, including the African Charter on Human and Peoples' Rights, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (CGSARPA), the African Charter on the Rights and Welfare of the Child (ACRWC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the First Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC). However, the country has yet to ratify other important human rights treaties which impact on the rights of indigenous populations, including International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples.

Indigenous Populations in Namibia: A Brief Profile of the San and the Himba Indigenous Groups

The San Communities

The indigenous inhabitants of Namibia are the San, also called the Bushmen. Indications are that they have lived in Namibia for as long as 20,000 years. Namibia today is home to between 30,000 and 33,000 San, who comprise less than 2% of the national population. The Apartheid Administration gave them an area to the West of Tsumkwe District as a Homeland but the Bushmen are by nature and tradition a nomadic people so this did not suit them. Their settlements in former Bushmanland today look desolate. Alcoholism is rife and other dominant tribes such as the Herero drive their herds of cattle into Bushmanland for grazing. During the war of independence, the South African Army used Bushmen as scouts. The SWAPO government has still not really forgiven them and, as a result, the Bushmen have continued to remain marginalized since independence.

Despite the fact that they are now widely used, the labels 'San' and 'Bushman' are etymologically pejorative and do not refer to a single self-identifying linguistic or cultural community. The San comprise a number of linguistically, culturally and economically diverse communities with distinct histories and cultural practices.

The Himba

Closely related to the Herero, the approximately 10,000 Himba live in the remote Kaokoland (50,000 square kilometers in size) in the dry and mountainous North-West Kunene region. The Himba still uphold their traditional semi-nomadic lifestyle. They speak the same language as the Herero, otjiherero, and live exclusively from their herds of cattle.

The Himba are politically organized under four chieftains along the Kunene River Basin. For decades they have lived in relative isolation, and even the successive colonial administrations rarely interacted with them. Recently, the Himba's main contact with outsiders has been with soldiers

during Namibia's liberation struggle with South Africa and, more recently still, with tourists and scientists who frequent the area.

They are sometimes called the Red People because they traditionally cover their bodies, hair and the animal skins they wear with a mixture of butterfat and ochre powder ground from iron ore. Married women wear a small headpiece made of soft skin on top of their braided and ochred hair. In addition, they often wear a heavy ornament around their necks that includes a conch shell hanging between their breasts in the front and a metal-studded leather plate that hangs down the center of their back. They also wear heavy metal rings around their ankles as well as other jewelry made of copper, ostrich shells or woven reeds. The men of the villages are less distinctive in their dress and some have taken to wearing western-style trousers and t-shirts. Some men leave the village to find work in other areas of the country and are thus more exposed to outside influences.

Institutions and Individuals Met During the Mission

During the mission, the delegation met and held fruitful discussions with a wide range of personalities and institutions in a bid to be properly informed about the situation of indigenous populations in the country. The delegation met with government officials including the Under-Secretary to Cabinet, representatives from the Ministry of Lands, Resettlement and Rehabilitation, the Ministry of Justice, the Ministry of Education, the Ministry of Agriculture and Forestry and the Speaker of the National Assembly. The delegation also met other relevant institutions including the Ombudsman of Namibia, the Law Society of Namibia, the University of Namibia's Center for Human Rights and Documentation and a group of Windhoek-based NGOs working on indigenous issues. On 5 August 2005, the delegation met and held fruitful discussions with the Honourable Royal /Ui/o/oo MP, the only San MP in the country at the moment. This meeting touched on various issues regarding the human rights situation of the San indigenous communities. The delegation also visited San communities in four regions of the country – namely: Caprivi, Kavango, Otjozondjupa, and Omaheke.

These visits took the delegation to Khwe communities from Kongola to Divundu, the Ju | 'hoansi in the Nyae Nyae Conservancy, the !Kung in the Nǃa Jaqna Conservancy and the Ju | 'hoansi in the Resettlement Project of Skoonheid Farm. During these meetings, the communities interacted freely with the delegation making frank and sometimes emotional contributions regarding their situation.

Due to lack of time, the delegation could not travel to the Kunene and Karas regions to meet the Himba and Nama indigenous communities respectively, nor could it visit more San communities as it would have wanted. However, the delegation raised the situation of all indigenous peoples with government officials and other stakeholders, and believes that the persons met and the discussions held with the different institutions have provided it with comprehensive information, enabling it to have a better understanding of the situation of indigenous issues in the country.

The Delegation's Findings and Observations

The delegation looked at the human rights situation of the San communities in terms of land and resource rights, health, education, hunger, poverty, employment, traditional leadership and political representation and other government policies.

Recognition

There is no specific recognition of indigenous peoples' rights in the Namibian Constitution and Namibia has not signed any of the international conventions that recognize indigenous peoples' rights.

Land and Resource Rights of the San

The San and other indigenous Namibians have been unable to exercise their right to land and other resources as a result of historically minimal access to education and economic opportunities under colonial rule, coupled with their relative isolation in remote areas of the country. The San in all the areas visited, except Tsumkwe, reported a lack of access to wildlife and forest fruits, to which they were used.

The Namibian government and the Communal Land Boards have been unwilling to recognize and grant land rights to groups who make claims on the basis of customary rights and traditional livelihoods.

Stereotyping and Discrimination

The term “San” is used to refer to a diverse group of indigenous peoples living in southern Africa who share historical and linguistic connections. The term “Bushmen” is no longer used officially in Namibia. Unfortunately, the San have historically been regarded as second-class citizens in Namibia by both the Europeans and Bantu-speaking peoples. They have historically been exploited by other ethnic groups. Members of the San community have endured exploitation and discrimination at the hands of their fellow citizens throughout history. This includes exploitation by colonial forces, who used them as trackers and later left them helpless in former military camps. At present the San people are at the mercy of farmers in both communal and commercial areas in Omaheke and Caprivi regions, as well as other employers across the country, where they are marginalized and subjected to unfair labour practices and inadequate shelter.

Other ethnic groups regard the San as useless, lazy and primitive. The stereotypical attitude of their neighbours has instilled in the San a sense of despair and low self-esteem.

Poverty and Unemployment

The San are undeniably the worst-off ethnic group in Namibia and their level of poverty is unmatched by that of any other ethnic group in the country. Their Human Development Index is less than half the national average, while their Human Poverty Index is more than double the national average. Per capita income of the San is the lowest among all language groups in Namibia, and the majority of the San population lacks access to the means of earning a cash income.

The majority of the San are said to have no work prospects and no access to education and basic services and, on the whole, their communities are

starving, with mortality rates among them ever-increasing due to hunger and untreated illnesses such as TB, typhoid fever and malaria.

Culture and Modernisation

The San live in isolated groups and traditionally used to be hunter-gatherers who migrated in small family bands. The San did not keep domestic livestock and they moved with everything they possessed to follow the availability of water, game and edible plants.

Today, however, San communities in Namibia are settled permanently in villages where they are diversifying their sources of livelihood like other communities. Some San members are engaged in livestock and crop farming although at a very small scale; some are employed to earn income, selling crafts, benefiting from the social welfare grants provided by the government, participating in national programmes and having access to social services such as education, water, health, transport and communication, etc.

Since being dispossessed of their land by one or another party, the San cultural roots have been threatened. They have been unable to practice their traditional skills and knowledge, one effect of this being that San women, men and children alike are degraded by others as culturally 'rootless', which further undermines the already shattered San cultural dignity and pride. This despairing situation is probably the root cause of the widespread alcohol abuse in many San communities, which obviously leads to other problems, such as violence and theft.

Nutrition and Healthcare

Since most San occupy the lower rungs of the social ladder, their poverty and vulnerability makes them more prone to infection by treatable diseases such as tuberculosis and malaria. HIV/AIDS is reported to be on the increase among San communities. This could be explained by the fact that San communities that hitherto were isolated from other ethnic groups have now been exposed to these groups and tourism has been encouraged in most San communities, further exposing them to visitors

from other areas. The average life expectancy of the San is 46 years, which is about 25% less than the national average of around 61.

The San have the worst access to healthcare of all Namibians, with more than 80% of them living more than 80 km (about an hour's drive away) from any sort of health facility, with these facilities in addition being very expensive to go to. They rely on mobile outreach centers which are often ill-equipped to deal with the complicated problems the people could potentially face.

The San and Education

The San in Namibia remain the least educated sector of society. It is even suggested that no other language group is even remotely close to the San in the area of education. The literacy rate among the San is the lowest, at just 23% compared to a national literacy level of 66%.¹

Enrolment rates show that there has been an increase in the number of San children enrolled over the years. Yet, this is still woefully inadequate and some researchers suggest that if all San school children of school age were to attend school, there would need to be an additional 8 -10,000 places created for them in the system.²

In Namibia, education for the San is free from grades 1 to 10. However, in practice there are instances of schools demanding tuition fees from San pupils. After grade 10 however, the government ceases to support the San and requires the parents or philanthropic organizations to continue.

Another problem with the education of the San is the lack of mother tongue instruction in primary schools. Mother tongue education has been introduced in very few schools in Tsumkwe district. Many San groups acknowledge the importance of mother tongue education for at least the first three years of school. These groups value the development of critical thinking skills as well as promoting the retention of endangered languages and heritage.

1) Suzman, James. *An Assessment of the Status of the San in Namibia*. Legal Assistance Centre. Windhoek: April 2001.

2) Ibid.

San Traditional Authorities

An ongoing obstacle to securing San human rights in Namibia is the government's continued denial of official recognition for some San traditional authorities. According to Article 102 (5) of the Namibian Constitution, a Council of Traditional Leaders has been established "in order to advise the President on the control and utilisation of communal land and on all such other matters as may be referred to it by the President for advice". The now more than 40 officially recognised Namibian traditional authorities play a vital role in allocating communal land – which makes up, according to Harring and Odendaal,³ 41% of the "82.4 million hectares of surface area in Namibia". Traditional leaders allocate land for residential purposes, cultivation and grazing.

To date, the Namibian government has officially recognised only two of the six Namibian San traditional authorities, namely the !Kung Traditional Authority in Tsumkwe District West (formerly West Bushmanland) and the Ju |'hoan Traditional Authority in Nyae Nyae.

Political Representation

The San are the least represented in government structures. Apart from the Tsumkwe District Constituency, where they are represented in Parliament and have a majority of San as Senior and Junior Councillors, they are insignificant in other regions and nationally. The only San MP seems not to be representative of all the communities, as many of those outside Tsumkwe seem not to know him, and complain that he does not articulate their grievances in Parliament.

Conclusions and Recommendations

The African Commission notes the positive initiatives taken by the Government of the Republic of Namibia to promote and protect the human rights of indigenous populations in the country, such as free education to indigenous groups, training programmes, etc. The African Commission, however, believes that there is room to do more and calls on the govern-

3) Harring, Sidney L. and Odendall, Willem (2002). *One Day We Will All be Equal: A Socio-legal Perspective on the Namibian Land Reform and Resettlement Process*. Windhoek: Legal Assistance Centre.

ment to intensify its programmes and policies aimed at enhancing the rights of indigenous populations.

The African Commission makes the following recommendations, which it hopes will be implemented by the government as a first step towards advancing the rights of indigenous communities in the country. The recommendations are made with due regard for the measures already taken by government to enhance the welfare of indigenous populations in the country and bearing in mind the socio-economic and political situation of the country, and with the understanding that the African Commission would be available at all times to support the government in their implementation. The recommendations also keep the gateway of dialogue between the African Commission and the Government of the Republic of Namibia open.

Education

The government should ensure that the policy of free education for San learners is respected and implemented. Those San learners who fail grade 10 examinations should be supported by the government to repeat, and those who drop out of school should be encouraged to return or be provided with vocational training that is relevant to the economic development of the country. Vocational training should also be introduced for grade 10 drop-outs and others unable to proceed to grade 11 in order to avoid wasting human resources.

The government should provide mother tongue education for all San pupils up to grade 3 and train San teachers to teach them. Grade 10 drop-outs could be trained as mother tongue instructors in their communities.

Complaints about discrimination and stereotypical utterances against San learners should be thoroughly investigated and punished. The government should criminalize discrimination in all forms but in particular based on race or ethnicity, in accordance with Article 4 of the Convention on the Elimination of all Forms of Racial Discrimination and Article 2 of the African Charter on Human and Peoples' Rights.

Training

The government should provide agricultural training to those San members who wish to engage in either crop or cattle farming, or both.

Land Rights

The San should be provided with communal land they can call their own. Access to land and land security for the San population is the most critical element that should be addressed by the Namibian government. Land security would greatly facilitate efforts on the part of the government, NGOs, and the communities themselves aimed at addressing their critical health issues, educational and political marginalisation, and numerous social problems. The protection and expansion of land rights is one of the most fundamental interventions that can be made on behalf of the San in Namibia to secure their sustainable livelihood.

Traditional Leadership and Political Representation

The traditional leadership of the San should be recognized by the government. Insisting that a particular ethnic group such as the Khwe San in Western Caprivi be ruled by another ethnic group, the Mbukushu, is a recipe for disorder and, eventually, conflict. Government should legislate affirmative action measures to increase the representation of San and other indigenous communities in governance structures such as Parliament, the National Council and local government structures. A quota system could be adopted to give indigenous communities a certain percentage of representation in these structures.

Health

The government should establish health centers nearer to San communities or ensure that mobile health centers visit these communities on a regular basis.

Employment

The government should encourage the development of income-generating activities in and around San communities and give priority to the employment of San members to fill vacancies. The government should ensure that labour laws are enforced so that proper working conditions are ensured for the San.

Hunger

San communities should be encouraged to grow crops for their subsistence. Those living in parks should be provided with safe places where their crops will not be destroyed by animals and, in the event the crops are destroyed, they should be entitled to compensation from the government.

Food aid and drought relief should be monitored on a regular basis, and local officials should be given adequate means to enable them to deliver food aid to the communities. The delegation was surprised to learn that tonnes of maize had been left to rot in a warehouse in Katima Molilo in Caprivi region, while San residents in the region had been going for months without food.

The San community should also be issued with Special Game Licenses to enable them to hunt for specific animals that can supplement their nutrition or income. In particular, the government should consider establishing a conservancy for the Khwe of Western and Eastern Caprivi, where the people already live side-by-side with wildlife.

Discrimination

The government should ensure that acts of racial discrimination are dealt with in accordance with internationally recognized instruments such as the African Charter, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Discrimination Against Women. The government should also establish sensitisation programmes for civil servants on issues relating to

anti-discrimination, particularly with regard to the San and other indigenous peoples.

Recognition of Indigenous Peoples

The government should ratify ILO Convention 169 on Indigenous and Tribal Peoples. The government should further include recognition and protection of indigenous peoples in its constitution and in national policies that affect the lives of the San and other indigenous peoples in Namibia. Where necessary, affirmative action should be considered.

Submission of Reports

The African Commission urges the government to expedite the submission of its reports and to include in those reports the various issues on indigenous populations in the country and measures taken, or being taken, to implement these recommendations.

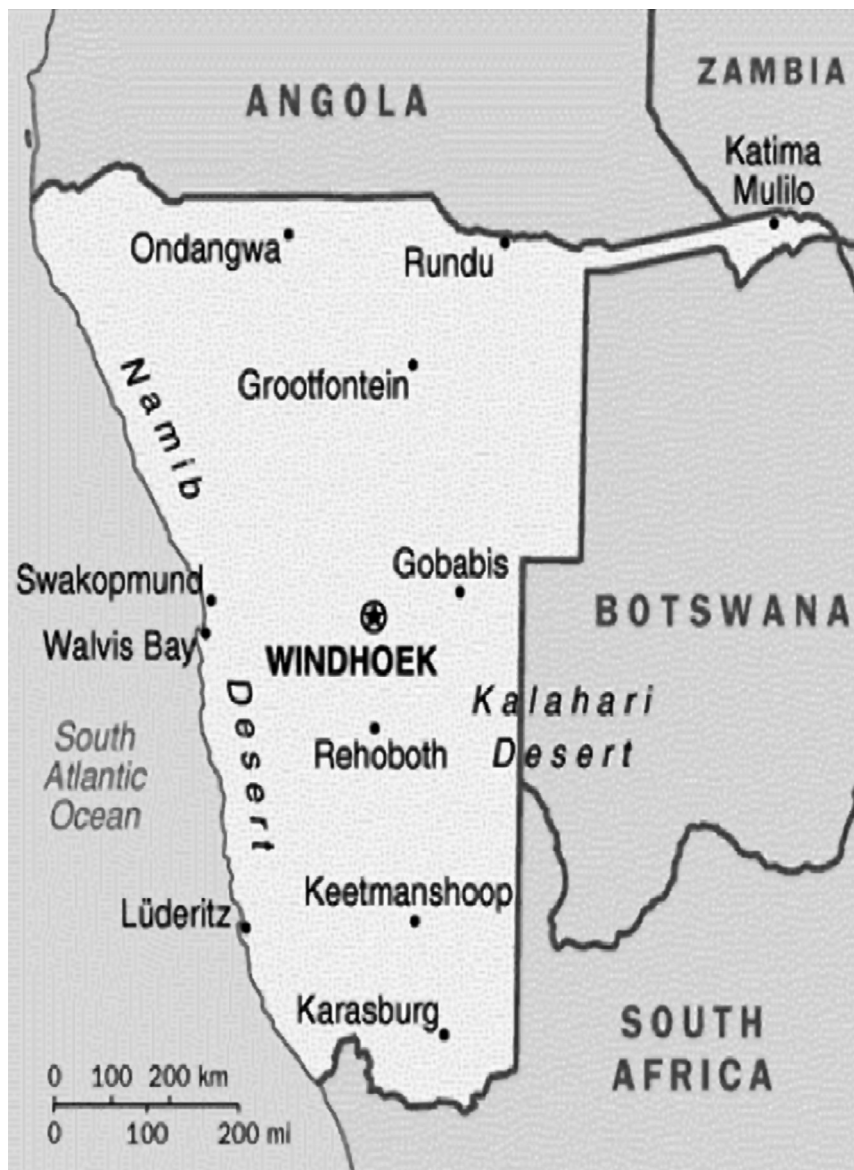
To the NGOs

NGOs should continue and intensify their support to promote the welfare of indigenous communities in the country. NGOs should also work closely with government and other institutions to enhance the welfare of indigenous communities in the country.

To the International Community

The international community, in particular donors, should support San projects, especially the conservancies, and support the Namibian government to provide adequate services to San communities.

MAP OF NAMIBIA



PART I

1. Introduction

- 1.1 The African Commission on Human and People's Rights (ACHPR or the African Commission) was established in 1987 in accordance with Article 30 of the African Charter on Human and Peoples' Rights (African Charter). It is a human rights treaty body charged with the promotion and protection of human and peoples' rights in Africa.
- 1.2 The African Charter was adopted by the 18th Assembly of Heads of State and Government of the Organisation of African Unity (OAU), now the African Union (AU), in Nairobi, Kenya on 26 June, 1981. Upon deposit of the requisite instruments of ratification, the Charter came into force on 21 October, 1986 and the first members of the African Commission were elected at the 23rd Assembly of Heads of State and Government of the OAU in June 1987. The inaugural meeting of the African Commission was held in Addis Ababa, Ethiopia in November 1987.
- 1.3 Article 45 of the African Charter provides for the mandate of the African Commission and this includes the promotion and protection of human and peoples' rights, interpretation of the African Charter and undertaking any other task assigned to it by the Assembly of Heads of State and Government.
- 1.4 In terms of Article 45 (1) of the Charter, the promotional mandate of the Commission shall include inter alia, to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local insti-

4) The Commission currently has five Special Rapporteurs and two Working Groups, namely; the Special Rapporteur on the Rights of Women in Africa; the Special Rapporteur on Prisons and Conditions of Detention in Africa; the Special Rapporteur on Human Rights Defenders in Africa; the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and the Special Rapporteur on Freedom of Expression in Africa. The Working Groups are the Working Group on Indigenous Populations/Communities and the Working Group/Follow-up Committee on the Implementation of the Robben Island Guidelines.

tutions concerned with human and peoples' rights and, should the case arise, give its views and make recommendations to governments; formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation; cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

- 1.5 To execute the mandate in Article 45 (1), the African Commission has initiated a number of measures, including the establishment of Special Mechanisms/Working Groups.⁴ These mechanisms undertake promotional as well as fact-finding missions to Member States of the African Union during the intersessional period of the African Commission and submit their reports to the African Commission during its ordinary sessions for consideration and adoption.
- 1.6 It is in this light that the Working Group on Indigenous Populations/Communities (WGIP or the Working Group) undertook a mission to the Republic of Namibia from 26 July – 5 August 2005.

2. Preparation of the Mission

- 2.1 The Secretariat of the African Commission began exchanging Notes Verbales with the Ministry of Foreign Affairs of the Republic of Namibia regarding the mission in November 2004. In June 2005, the Government of the Republic of Namibia officially agreed to the African Commission's request for its Working Group on Indigenous Populations/Communities to visit the country.
- 2.2 In consultation with the Secretariat of the African Commission, a draft programme for the mission was prepared by the Ministry of Justice of Namibia. The programme was finalised with contribution from local NGOs (Non-Governmental Organisations) upon the arrival of the delegation in Namibia.

- 2.3 The delegation of the Working Group comprised:
- Commissioner Andrew Ranganayi Chigovera – Member of the African Commission and Chairperson of the Working Group on Indigenous Populations/Communities and
 - Dr. Naomi Kipuri – Member of the Working Group.
- 2.4 The Mission was supported by Mr. Robert Eno, Legal Officer of the Secretariat of the African Commission on Human and Peoples' Rights.
- 2.5 The mission could not start as scheduled due to the late arrival of members of the delegation occasioned by the industrial action by South African Airways' employees that started on 22 July 2005. The head of the delegation arrived in Namibia only in the afternoon of 26 July 2005 while Dr. Naomi Kipuri arrived on 31 July 2005.

3. Terms of Reference for the Mission

- 3.1 One of the tasks in the terms of references of the WGIP is to gather information on the situation of indigenous populations/communities in the respective states of the African Union, and to examine the legislative, constitutional and other provisions and mechanisms put in place to promote and protect the rights of indigenous populations. To this end, the African Commission has mandated the WGIP to undertake research, studies and country visits within Member States of the AU.
- 3.2 The general aim of the mission was, therefore, to execute the mandate of the WGIP and of the African Commission. The specific objectives of the mission were inter alia, to:
- Gather information on the situation of indigenous populations in Namibia;
 - Engage the Government of the Republic of Namibia in dialogue on the situation of indigenous populations, in particular, and its relationship with the African Commission as a whole;

-
- Engage civil society regarding its role in the promotion and protection of the rights of indigenous populations in Namibia; and
 - Visit and discuss with indigenous communities to understand the problems, if any, affecting the effective enjoyment of their human rights.

4. Brief History of Namibia

- 4.1 Germany annexed South-West Africa (now Namibia) in 1885 in line with agreements made at the Berlin Conference. Germany never successfully imposed its hegemony on the colony, least of all on Ovambo territories bordering Angola. By contrast, Herero and Nama populations living in Central and Southern Namibia experienced the brunt of German empire-building. The German-Herero War of 1904 effectively shattered the Herero dominion over Central South-West Africa. The German response to the Herero resistance was uncompromising and the leader of the German forces, General Von Trotha, issued his notorious extermination order that called for the killing of any Herero encountered by German soldiers. The massively outgunned Herero were forced to retreat and those not killed fled to present day Botswana.
- 4.2 Following its victory, Germany increased its presence in Namibia, but the relatively short-lived tenure of German control in the country meant that, by the onset of the First World War, the colony was still in its infancy. Large areas remained outside effective German control.
- 4.3 The surrender of the German forces in South-West Africa to the Army of the Union of South Africa in 1917 marked the beginning of Namibia's domination by South Africa. With the adoption of the Treaty of Versailles in 1919, German South-West Africa was declared a mandate of the League of Nations under South African administration. Subsequently, German was displaced as the official language and, although most Germans remained, 4,000 left the country. South Africa encouraged Afrikaans families to settle in the country, especially in the South. In 1951, the oppressive South African

Apartheid policy was extended to South-West Africa. With the implementation of the Odendaal Plan, homelands were established between 1964 and 1966 and Black people were forcibly resettled.

- 4.4 The United Nations withdrew the mandate from South Africa in 1966. South Africa refused to accept to hand its control over the country to the UN. The South-West African People's Organisation (SWAPO), under the leadership of Sam Nujoma, then started an armed liberation struggle. Most of it took place in Ovamboland, on the Angolan border in the north-west.

5. Namibia's Independence

- 5.1 The diplomatic turmoil between the UN and South Africa and the armed struggle of SWAPO lasted for 23 years. On November 11, 1989 the first free elections to the Constitutional Assembly were held. SWAPO won the elections, gaining 57% of the votes. In 1990, the constitution was changed. Sam Nujoma became President and Namibia became the 151st member of the United Nations. In 1994, Walvis Bay, Namibia's only seaport of economic importance, was handed over by South Africa - the last step towards the independence of Namibia.

6. Geography

- 6.1 With an area of approximately 824,000 square km, Namibia is more than triple the size of Great Britain. Border countries include Angola to the north (1,376 km long), Botswana to the east (1,360 km long), South Africa to the south (855 km long) and Zambia to the north-east (233 km long). The west is boarded by the Atlantic Ocean. The north-to-south length of the country is 1,500 km, while the east-to-west width is around 600 kilometers in the south and 1,100 kilometers in the north. The population density is very low (1.8 million people in total), amounting to 2.2 inhabitants per square km. With the exception of the border rivers - Orange in the south and Kunene, Okavango and Zambezi in the north - there are only dry rivers in Namibia.

- 6.2 Namibia can be divided into four major geographical segments. In the west stretches the Namib Desert, with hardly any vegetation. It reaches from the north of South Africa up to Angola. The desert belt has a width of about 100 km in the south and 1,100 km in the north, gets up to 600 meters in height and is characterized by mighty expanses of sand dunes in its central part. In the north and the south, it is predominantly gravel fields. Further inland, the desert belt is followed by the "EscarPMENT", a mountain wall of up to 2,000 meters. Namibia's highest mountain is the Brandberg, with a height of 2,579 meters.
- 6.3 The Escarpment changes into the Central Plateau, which slowly descends towards the east. The heights of the central highlands vary between 1,100 m and 1,700 m. The majority of Namibian towns and villages lie on this plateau, including the capital Windhoek at 1,654 meters above sea level. Further to the east lies the Kalahari Basin, also part of the plateau, which reaches heights of 1,000 m in some places. It is characterised by wide sandy plains and long dunes with scarce vegetation. Another distinct geographical area is the north-east, the relatively rainy Kavango and Caprivi region. It is flat and covered with dense bushveld.
- 6.4 Simply put, average rainfall increases from the south-west to the north-east. The annual amounts vary between 50 mm in the Namib and 700 mm in the Caprivi.

7. Population

- 7.1 The country has a population of about 1.8 million, with the following age structure (July 2004):
- 0-14 years: 43% (male 384,900; female 375,282)
 - 15-64 years: 53% (male 468,942; female 475,504)
 - 65 years and over: 4% (male 28,905; female 37,794)

8. Ethnic Composition

8.1 Namibia's population is made up of 87.5% Africans, 6% Whites and 6.5% mixed. About 50% of the population belongs to the Ovambo tribe and 9% to the Kavango tribe. Other ethnic groups include the Herero 7%, Damara 7%, Nama 5%, Caprivian 4%, San 2%, Baster 2% and Tswana 0.5%.

9. Administrative Divisions

9.1 Namibia is divided into 13 administrative regions, namely Caprivi, Erongo, Hardap, Karas, Khomas, Kunene, Ohangwena, Okavango, Omaheke, Omusati, Oshana, Oshikoto and Otjozondjupa.

10. Language and Religion

10.1 English is the official language; Afrikaans is the common language of most of the population and about 60% of the white population; German 32%; indigenous languages include Oshivambo, Herero and Nama.

10.2 Christians comprise 80% to 90% of the population - (Lutheran 50% at least) and indigenous beliefs 10% to 20%.

11. International Human Rights Obligations

11.1 The Republic of Namibia is a State Party to the African Charter on Human and Peoples' Rights. It ratified the African Charter on 30 July 1992. Namibia is also a party to several international human rights instruments, including:

- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (CGSARPA);
- The African Charter on the Rights and Welfare of the Child (ACRWC);
- International Covenant on Economic Social and Cultural Rights (ICESCR);

-
- International Covenant on Civil and Political Rights (ICCPR);
 - First Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR);
 - Convention on the Elimination of All Forms of Racial Discrimination (CERD);
 - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
 - Convention Against Torture (CAT); and
 - Convention on the Rights of the Child (CRC).
- 11.2 The country has yet to ratify the Protocol to the African Charter on Human and Peoples' Rights relating to the Establishment of an African Court on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa. It has also not ratified International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples.
- 11.3 It is a Member of the United Nations (UN), the Non-aligned Movement, the Commonwealth, the African Union (AU) and the Southern African Development Community (SADC).

12. Previous Missions to the Country

- 12.1 Commissioner Andrew Rangayani Chigovera undertook a promotional mission to the Republic of Namibia from 2 - 6 July 2001 and Commissioner Vera Chirwa undertook a mission in her capacity as Special Rapporteur on Prisons and Conditions of Detention in Africa from 17 – 28 September 2001.

PART II

13. Indigenous Populations in Namibia: A Brief Profile of the San and the Himba Indigenous Groups

- 13.1 As with other southern African states, the pre-colonial history of Namibia is a subject of some speculation, and it is thought that human settlement in Namibia dates back some 27,000-30,000 years. The earliest humans in Namibia were the forbears of southern Africa's Khoe and San peoples. These early populations were scattered throughout much of the country and survived primarily on hunting and gathering.
- 13.2 The largest Bantu migrations into Namibia occurred in the second millennium. Entering Namibia from the north, these groups settled initially in the comparatively fertile regions bordering Angola and only later began to move southwards, led by nomadic pastoralists in pursuit of grazing for their livestock.
- 13.3 These pastoralists clashed with indigenous populations of San hunter-gatherers. The mutual suspicion and antipathy between these two groups persists in some areas to this day. While some San groups moved away from areas in which pastoralists settled, others vigorously resisted incursions into their territories. In the Omaheke region, for example, the San were sufficiently organized to maintain the territorial integrity of their ancestral lands until the advent of European colonialism.
- 13.4 By the mid-nineteenth century, Namibia was home to the immediate ancestors of most of the peoples living there today – the Herero-speaking Himba and Tjimba had settled in and around the Kunene Basin; the Owambo kingdoms were established in Angola and northern Namibia, Herero and Mbanderu had moved beyond Otjiwarongo and into the Khomas and Omaheke regions; and various

Nama groups from southern Africa had settled in southern and central Namibia. Numerous groups of San lived throughout the Kalahari Basin and its periphery.

14. The San Communities

- 14.1 The indigenous inhabitants of Namibia are the San, also called the Bushmen. Indications are that they have lived in Namibia for as long as 20,000 years. Namibia today is home to between 30,000 and 33,000 San, who comprise less than 2% of the national population. The Apartheid Administration gave them an area to the west of Tsumkwe District as a Homeland but the Bushmen are by nature and tradition a nomadic people so this did not suit them. Their settlements in former Bushmanland today look desolate. Alcoholism is rife and other dominant tribes such as the Herero drive their herds of cattle into Bushmanland for grazing. During the war of independence, the South African Army used Bushmen as scouts. The SWAPO government has still not really forgiven them and, as a result, the Bushmen have continued to remain marginalized since independence.
- 14.2 Despite the fact that they are now widely used, the labels 'San' and 'Bushman' are etymologically pejorative and do not refer to a single self-identifying linguistic or cultural community. The San comprise a number of linguistically, culturally and economically diverse communities with distinct histories and cultural practices.
- 14.3 Within Namibia, the San population belongs to three major Khoesan language groups: the Southern, the Central and the Northern Khoesan groups, which in turn are sub-divided into several distinct language groups or self-identifying communities, including the Hai | | om, the Ju | 'hoansi, the !Kung, the Naro, the Khwe and the !Xóõ.
- 14.4 Census data indicate that, in 1991, former Bushmanland in Tsumkwe district was home to a total of 3,851 people, 3,350 or 87% of whom identified themselves as San. Tsumkwe district is divided

into two sub-districts, namely East and West Tsumkwe, corresponding roughly to socio-linguistic divisions among San living there. East Tsumkwe is home to around 1,600 people, mostly Ju|'hoan speakers. West Tsumkwe is home to the !Kung speaking population, a large population of !Kung-speaking immigrants from Kavanago and Angola and former farm labourers from the Grootfontein farms and elsewhere.

- 14.5 The Caprivi region is home to approximately 4,000 San, most of whom speak Khwedam (Kxoedam) and who are known locally as the Khwe (kxoe), Barakwena or Barakwengo. At the time of independence, West Caprivi was also home to a Vasekele !Kung population reportedly numbering around 600 people, but around half of them have moved elsewhere.
- 14.6 The Khwe, most of whom live between the Kavango and Kwando Rivers in West Caprivi, have had possibly the most tumultuous and complex recent history of all Namibian San. The government has refused to recognise their traditional authority structures, their land tenure remains insecure and a large number of them fled to Botswana in late 1998 fearing intimidation and harassment from allegedly ill-disciplined members of the Namibian Defence Force (NDF) and Special Field Force (SFF) following the secessionist attempt in Caprivi region. Additionally, the government has been less than accommodating in dealing fairly with Khwe concerns over the past decade.
- 14.7 For example, the expansion of the Angolan conflict into West Caprivi and the Kavango region stalled development efforts in a region marked by extreme poverty, widespread food insecurity, a very high HIV infection rate and economic underdevelopment. At present, the Caprivi is home to more than half of the total regional Khwe population of 6,880. Of the 4,000 Khwe living in the Caprivi, 90% live in settlements that are home to more than 50 people, and 10% in settlements of over 500 people.

-
- 14.8 In addition to the Khwe, West Caprivi is home to a fluctuating population of around 300 Vasekele !Kung. Apart from Khwe and Vasekele living in West Caprivi, it is estimated that over 1,000 Mbukushu speakers have established plots east of the Kavango region, mainly in and around Mutciku. In addition, several (primarily Oshiwambo-speaking) farmers have settled with their cattle on Namibia Development Corporation (NDC) farms near Omega. The relatively few San living east of the Kwando River are found in several small settlements between Kongola and Katima Mulilo.
- 14.9 At present, in excess of 10,000 San from a number of different linguistic groups live scattered throughout Namibia's northern and eastern communal areas. Outside the area formerly known as Bushmanland, the most significant San populations are found in the predominantly Oshiwambo, Otjiherero and Rukavango-speaking communal areas, where despite numbering over 7,000 individuals, they constitute small minority populations. Only in the Omaheke region (former Hereroland), where the San make up 10% of the total population, can they be regarded as a numerically significant minority.
- 14.10 San communities are settled in all parts of Namibia. They are widespread in the Otjozondjupa, Caprivi, Ohangwena and Oshikoto regions of the country. In most cases, the San communities are settled along tribal lines in the different regions of the country and have embraced the socio-economic lifestyle of the region in which they live. In some regions, certain indigenous tribes comprising very few members do not constitute a community but rather a few households with several family members each.
- 14.11 The San communities living in Otjozondjupa region and Caprivi region still derive their livelihood from hunter-gathering and therefore depend on the natural resources within their environment. Otjozondjupa region and the Tsumkwe area in particular have the highest concentration of San. Of the approximately 50% of the Namibian San population that live on communal lands, only 10% live in Tsumkwe District (the only district where San have

customary land rights), a further 25% live in Kavango, the north-central, Otjozondjupa and Omaheke (former Hereroland) regions combined, and just over 10% in West Caprivi. Only the San in Tsumkwe District have retained access to sufficient land and had their traditional authorities officially recognized by the government.

15. The Himba

- 15.1 Closely related to the Herero, the approximately 10,000 Himba live in the remote Kaokoland (50,000 square kilometers in size) in the dry and mountainous North-West Kunene region. The Himba still uphold their traditional semi-nomadic lifestyle. They speak the same language as the Herero, otjiherero, and live exclusively from their herds of cattle.
- 15.2 The Himba migrated into north-west Namibia and south-west Angola along the Kunene River in the 16th and 17th centuries, and settled there. They moved into present day Namibia as part of a larger migration of Bantu-speaking peoples from East Africa several hundred years ago.
- 15.3 The Himba are politically organized under four chieftains along the Kunene River Basin. For decades they have lived in relative isolation, and even the successive colonial administrations rarely interacted with them. Recently, the Himba's main contact with outsiders has been with soldiers during Namibia's liberation struggle with South Africa and, more recently still, with tourists and scientists who frequent the area.
- 15.4 They are sometimes called the Red People because they traditionally cover their bodies, hair and animal skins they wear with a mixture of butterfat and ochre powder ground from iron ore. Married women wear a small headpiece made of soft skin on top of their braided and ochred hair. In addition, they often wear a heavy ornament around their necks that includes a conch shell hanging between their breasts in the front and a metal-studded leather

plate that hangs down the center of their back. They also wear heavy metal rings around their ankles as well as other jewelry made of copper, ostrich shells or woven reeds. The men of the villages are less distinctive in their dress and some have taken to wearing Western-style trousers and T-shirts. Some men leave the village to find work in other areas of the country and are thus more exposed to outside influences.

- 15.5 Today, the Himba live as they have for centuries and manage to eke out an existence by following their herds of goats and cattle to new grazing areas and waterholes as existing areas become depleted. Though they cultivate maize during the rainy season and herd sheep and goats, the Himba consider themselves predominantly cattle herders.
- 15.6 Since independence, many Himba have expressed concerns at the slow pace of development in Kunene Region and have complained of neglect. Although they are portrayed in tourist magazines as living examples of an “unchanging African rural idyll” and by agencies as underdeveloped and primitive, the Himba maintain a sophisticated and, by Namibian standards, relatively lucrative and prosperous cattle-centered economy. Their culture is threatened by the continuously growing and uncontrolled Kaokoland tourism.
- 15.7 The accusations of neglect may be unfounded, since significant developments have taken place in Kunene Region since independence. Of particular significance has been the improvement in healthcare and education, with Himba children – as an educationally marginalised group – receiving special attention. However, while Himba see themselves as marginalised in terms of some key social development indicators, they maintain control over much of their ancestral land and are prosperous by Namibian standards in terms of livestock capital.
- 15.8 Unlike many indigenous groups in Africa, the Himba have managed to maintain much of their traditional lifestyle, perhaps owing to the fact that the land they occupy is so harsh and unyielding

that it has rarely been coveted by the colonialists and commercial farmers who have affected so many other regions of the continent.

- 15.9 It is also noted that the Nama are the descendants of pastoralists who entered the country about 2,000 years ago. Although the Nama today can be found throughout the country, they are predominantly concentrated in the Karas region, in the south of Namibia. This concentration reflects the "homelands" to which these groups were assigned during the apartheid era, and both areas consist largely of barren overgrazed desert. Today these communal areas are occupied primarily by the elderly and children, as adults migrate to other areas in search of work. Other groups of Nama have been removed from national parks without being compensated and, like the San, are virtually landless. Although the Nama suffer from many of the same hardships as the San, as a group they are unquestionably stronger politically and economically. The Khoekhoegowab language is spoken by both the Nama and Hai ||om, and has been fully developed and is in use as a language of education.

PART III

16. Institutions and Individuals Met During the Mission

- 16.1 This report provides an account of discussions held with relevant stakeholders in Namibia and observations made by the delegation of the African Commission's Working Group on Indigenous Populations/Communities during its Mission to the Republic of Namibia from 26 July to 5 August 2005.
- 16.2 During the mission, the delegation met and held fruitful discussions with a wide range of personalities and institutions in a bid to be properly informed about the situation of indigenous populations in the country. The delegation met with government officials, including the Under-Secretary to Cabinet, representatives from the Ministry of Lands, Resettlement and Rehabilitation, the Ministry of Justice, the Ministry of Education, the Ministry of Agriculture and Forestry and the Speaker of the National Assembly. The delegation also met other relevant institutions including the Ombudsman of Namibia, the Law Society of Namibia, the University of Namibia's Centre for Human Rights and Documentation and a group of Windhoek-based NGOs working on indigenous issues. On 5 August 2005, the delegation met and held fruitful discussions with the Honourable Royal /Ui /o/oo MP, the only San MP in the country at the moment. This meeting touched on various issues regarding the human rights situation of the San indigenous communities.
- 16.3 The delegation also visited San Communities in four regions of the country – namely: Caprivi, Kavango, Otjozondjupa and Omaheke. These visits took the delegation to Khwe communities from Kongola to Divundu, the Ju|'hoansi in the Nyae Nyae Conservancy, the !Kung in the Nǀa Jaqna Conservancy and the Ju|'hoansi in the Resettlement Project of Skoonheid Farm. During these meetings, the communities interacted freely with the delegation making frank and sometimes emotional contributions regarding their situation.

- 16.4 Due to lack of time, the delegation could not travel to the Kunene and Karas regions to meet the Himba and Nama indigenous communities respectively, nor could it visit more San communities as it would have wanted. However, the delegation raised the situation of all indigenous peoples with government officials and other stakeholders and believes that the persons met and the discussions held with the different institutions have provided it with comprehensive information enabling it to have a better understanding of the situation of indigenous issues in the country.
- 16.5 The mission started with a courtesy call to the Under-Secretary to Cabinet on 26 July 2005 and ended with a Press Conference on 5 August 2005.

17. Courtesy Call to the Under-Secretary to Cabinet

- 17.1 On 26 July 2005, the delegation paid a courtesy call to the Under-Secretary to Cabinet, Mr. M. Tjahikika. The Head of the Delegation, Commissioner Andrew Ranganayi Chigovera, began by apologizing to the Under-Secretary for the late start of the mission, which inevitably resulted in changes to the programme. He thanked the Government of the Republic of Namibia for accepting the request of the African Commission for its Working Group to visit the country.
- 17.2 Commissioner Chigovera then briefed Mr. Tjahikika on the purpose of the mission. He said that the Working Group had not been in existence for long, having been established only at the 34th Ordinary Session of the African Commission held in November 2003. He said that, due to lack of funds, the Working Group was only able to start working in the early part of 2005.
- 17.3 The Head of the Delegation informed Mr. Tjahikika that the question of the protection of indigenous populations in Africa was one of several thematic human rights issues being dealt with by the African Commission. He indicated that the others included the rights of prisoners, the rights of women, freedom of expression, refugees and internally displaced persons and human rights defenders.

-
- 17.4 He said that the Commission had undertaken a study into the question of indigenous communities in Africa and produced a Report, which was adopted by the Commission at its 34th Ordinary Session. The Report was launched at the 61st Session of the UN Commission on Human Rights in April 2005 and later at the 37th Ordinary Session of the African Commission in May 2005.
- 17.5 Commissioner Chigovera stated that the Report had provided the criteria used by the African Commission to identify indigenous populations, noting that the two main criteria were originality and self-identification, that is, that they should be originally from the area and that they self-identify as indigenous.
- 17.6 The Head of Delegation indicated that, with respect to Namibia, the African Commission recognized two indigenous communities; the San, through originality, and the Himba through self-identification. He said that due to insufficient time, the delegation would visit only the San communities and may visit the Himba during subsequent missions.
- 17.7 He said that the African Commission had read about some positive initiatives taken by the government aimed at enhancing the welfare of indigenous populations in particular and marginalized and minority groups in general.
- 17.8 Commissioner Chigovera indicated that the delegation was in the country to learn more about those initiatives and to assess the human rights situation of indigenous populations, looking in particular at the laws, policies and programmes put in place, the impact of the programmes on the lives of indigenous populations, the representation of indigenous groups in governance structures from local to national level and any other government initiatives that would provide the delegation with sufficient information on the situation of indigenous populations in the country.
- 17.9 He informed the Under-Secretary to Cabinet that, at the end of the mission, the delegation would prepare its report with appropriate

recommendations and present it to the African Commission. When the report was adopted by the latter, it would be forwarded to the Government of the Republic of Namibia for its comments, if necessary. The report would also be annexed to the Commission's Activity Report to the Assembly of Heads of State and Government of the AU. Once adopted by the latter, it would become a public document subject to wider distribution and dissemination to interested parties.

- 17.10 In response, Mr. Tjahikika thanked the delegation for choosing Namibia for its mission. He said that he was sure the mission would be a success as the government had been doing its best to improve the lives of indigenous peoples and thus had nothing to hide from the delegation. He assured the delegation that the government was open, and whatever information was needed by the delegation would be provided by the government.
- 17.11 He further informed the delegation that, before the Mission of the Working Group, the Office of the Deputy Prime Minister had programmed a nationwide tour of indigenous communities to assess government programmes and the general conditions of indigenous communities in the country. He noted that the Deputy Prime Minister's nationwide tour had commenced just a day before the Mission of the Working Group and would continue even after the Mission of the Working group.
- 17.12 He noted that government policies regarding indigenous communities included, inter alia, rural development programmes, affirmative action, the establishment of special schools, etc. Regarding the question of political representation, Mr. Tjahikika indicated that the government had taken measures to ensure that indigenous groups were represented at all levels of governance. He informed the delegation that there was a San Member of Parliament (MP), and a Deputy Minister from the Himba indigenous community, and that both communities had members who were Senior as well as Junior Councillors and, in terms of the Traditional Leaders Act, they had the right to elect their own traditional leaders.

17.13 He concluded by indicating that more details about government policies and programmes would be provided to the delegation by the different line ministries.

18. Meeting with the Ministry of Justice

18.1 On 27 July 2005, the delegation met with authorities from the Ministry of Justice. The delegation of the Ministry of Justice was led by the Honourable Daniel Ntony Nujoma, MP and Deputy Minister of Justice. Also in attendance was the Permanent Secretary (PS) of the Ministry, the Chief Legal Officer and the Human Rights Officer.

18.2 The Deputy Minister started by welcoming the delegation to Namibia and extended the apologies of the Minister, who was unavoidably absent.

18.3 He informed the delegation that while the government was taking measure to address poverty across all communities in the country, it also recognized the fact that there was a particular group that needed special attention, that is, the San. He noted that because of their disadvantaged situation throughout history, they had remained poor and marginalized. However, the government was taking steps through law and policy to bring them out of poverty. To this end, he said that the government has passed legislation such as the Traditional Leaders Act and the Communal Land Reform Act, and had also introduced a minimum wage for farm workers of N\$ 450 to stop the exploitation of San members who work on commercial farms. He added that special schools had been provided for San students.

18.4 On development, he said that the government's food and drought relief had created a dependency syndrome. The Deputy Minister indicated that the government was putting in place measures to make the San less dependent on food relief and, to this end, had provided them with farming material and tools, including seeds for cultivation. The government had also made available grazing land for

those who had livestock. He noted that the government was encouraging development but also ensuring that their culture was not destroyed.

- 18.5 Mr. Nujoma also noted a number of challenges faced by the government in trying to alleviate the problems of indigenous communities in the country, especially the San. These challenges, according to the Deputy Minister include, inter alia: the increasing number of San people being infected and affected by HIV / AIDS, the high rate of unemployment as a result of a drop in employment in the agricultural sector, boredom and increasing incidences of alcoholism and violence resulting from the lack of employment.
- 18.6 The Permanent Secretary of the Ministry of Justice added to the list of challenges, indicating that culture was one of the major hindrances to development in indigenous communities. She noted that some of the indigenous communities refuse to send their children to school or for immunization, on cultural grounds. She informed the delegation that the government was trying to address this through education and sensitization.
- 18.7 The PS informed the delegation that the provision of government services, including the payment of a pension to indigenous populations, had been hampered in some communities because many of the people did not have Identification Documents (IDs). She noted that some people had papers that did not reflect their real ages and as such could not benefit from pensions, while others had different names on their IDs, usually names given to them by their employers when they were on the farms. She added that the government was working with the Legal Assistance Center (LAC) to try and solve the problem.
- 18.8 Commissioner Chigovera thanked the Deputy Minister and the Permanent Secretary for their interventions. He informed them that the delegation had not gone to Namibia because the country had any particular problems regarding indigenous communities. He said that the mission was part of initiatives being undertaken by the

African Commission to deal with thematic human rights issues in Africa that had not been given adequate attention in the past. He indicated that the purpose of the mission was to engage the government of Namibia and other relevant stakeholders in constructive dialogue on how to enhance the living conditions of indigenous communities in the country.

- 18.9 Commissioner Chigovera indicated that the delegation was aware of the measures the government had put in place to improve the lives of indigenous populations in the country, adding that the delegation would like to be briefed about those measures so that it could assess the extent to which the measures had impacted on the lives of indigenous communities, the successes and failures, if any, and any problems associated with the implementation of government programmes. He said that the delegation was also interested in learning about the land tenure system, especially as it relates to indigenous peoples, the respect for their cultural rights, access to education and political representation.
- 18.10 Regarding land rights, in particular, Commissioner Chigovera indicated that the delegation would like to know the legal and other mechanisms put in place to protect the land rights of indigenous peoples, especially the San, and how successful those measures, including the land reform and resettlement programmes, have been in addressing the question of the land rights of the San.
- 18.11 On cultural rights, Commissioner Chigovera indicated that the delegation would like to know whether mother tongue education was being used in school as a medium of instruction, and on political representation he indicated that the delegation would like to know the level of representation of indigenous populations at all levels of governance – traditional, local, regional and national. He said that the delegation would also like to know whether the indigenous members in high political office were representative of their people.
- 18.12 In response to the questions raised by Commissioner Chigovera, the Chief Legal Officer at the Ministry of Justice, Mr. Titus Iipumbu,

indicated that the principal beneficiaries of the government resettlement programme were ex-combatants, the San and persons with disabilities. He added that there was however no specific provision in the Land Reform Act of 1995 making reference to the San as the Act sought to address the resettlement problems of all Namibians.

18.13 While commending the government for the initiatives it had put in place to uplift the lives of indigenous communities in the country, the delegation expressed concern at the absence of specific legal provisions to address the problems of indigenous populations in the country in line with the African Charter and other international human rights instruments. The delegation also expressed concern over the absence of specific legislative provision with sanctions prohibiting stereotypical discrimination of indigenous populations in accordance with the African Charter and the Convention on the Elimination of Racial Discrimination.

19. Meeting with the Speaker of the National Assembly

19.1 While the delegation had originally intended to discuss issues relating to any legislative programmes, if any, either current or planned, to address matters relating to vulnerable and indigenous populations in the country, the Head of the Delegation decided to reduce the meeting to a courtesy call when it became apparent that the presence of the press during the meeting could not be avoided as this had apparently been arranged by the Speaker's Office.

19.2 After welcoming the delegation, the Speaker of the Namibian National Assembly, the Honourable Dr. Theo-Ben Gurirab, MP requested the delegation to brief him on the purpose of the mission. Commissioner Chigovera started by thanking the Speaker for finding time to meet with the delegation. He briefed the Speaker about the African Commission and described the process leading to the establishment of the Working Group. He then went further to brief the Speaker on the purpose of the Mission, the expectations of the delegation and the process that would be adopted in the preparation and finalization of the report of the Mission.

-
- 19.3 Regarding the visit to the Office of the Speaker, Commissioner Chigovera indicated that parliaments were important institutions in the protection of human rights, noting that the African Commission looked up to national parliaments when it came to legislative reform to improve the lives of people.
- 19.4 In his response, the Speaker wanted to know what the human rights record of African States were in light of all the conflicts, refugees and internally displaced persons (IDPs), and the funding situation of the African Commission. He said that his office remained open to helping the government implement the recommendations of the African Commission. The Speaker also wanted to know the problems and challenges facing indigenous populations in Namibia.
- 19.5 Responding to the Speaker's questions regarding the human rights record of African States, Commissioner Chigovera indicated in terms of compliance with their human rights obligations that the record varied from country to country. He said the AU needed to do more to encourage States to comply with their human rights obligations. He said the African Commission presents, at each Ordinary Session of the Assembly of Heads of State and Government of the AU, an Activity Report which contains decisions and recommendations on various human rights issues requiring governments to take steps to implement them. In most cases, those governments do not bother to comply with the recommendations and it was the duty of the AU to prevail upon its members to comply with those decisions and recommendations. On State reporting obligations, Commissioner Chigovera informed the Speaker that while most States Parties had been submitting their reports in accordance with Article 62 of the African Charter, about 18 States were yet to submit a single report. He added that this notwithstanding, the Commission continues to engage States at various levels on the need for them to comply with their human rights obligations.
- 19.6 On funding, Commissioner Chigovera informed the Speaker that the situation of the African Commission left much to be desired. He said that, in terms of Article 41 of the African Charter, funding for

the African Commission was supposed to be provided by the African Union. However, the funding from the AU had been very inadequate, forcing the Commission to resort to other sources of funding, usually from NGOs and international donors.

- 19.7 On the problems and challenges facing indigenous populations in the country, Commissioner Chigovera stated that the delegation could not prejudge the situation as it had not yet met with the different stakeholders. He however informed the Speaker that the delegation would be looking at, among other things, the general living conditions of indigenous communities, their human rights situation, in particular, their right to access to land, cultural rights and political representation.
- 19.8 He concluded by saying that the delegation would like to assess the measures put in place by the government to bring indigenous populations to a level where they could access their human rights like other citizens in the country.
- 19.9 After the meeting with the Speaker, Commissioner Chigovera responded to questions from the press.

20. Meeting with the Ministry of Education

- 20.1 The delegation met with two officials from the Ministry of Education – Mr. Mathew Chimhopileni, Director of Higher Education and Mr. George Angoro, Director of Primary Education, on 27 July 2005.
- 20.2 The Head of the Delegation, Commissioner Andrew Chigovera, briefed the officials about the African Commission and the purpose of the Working Group's mission to the Republic of Namibia. He said that the delegation was visiting the Ministry because the latter was very important in the development process of indigenous communities in the country. He said that the delegation would like to seek clarification regarding allegations of high level of illiteracy among indigenous communities, the enjoyment of socio-cultural rights, the

use of mother tongue for instruction and the specific programmes put in place by the Ministry to promote and protect the right to education of indigenous populations in the country.

- 20.3 Mr. Angoro welcomed the delegation to Namibia and thanked the Head of the Delegation for the briefing. He indicated that the Ministry was working hard to ensure education for all Namibians with particular emphasis on educating vulnerable communities such as indigenous populations.
- 20.4 He gave a general overview of the infrastructure and system of education in Namibia. He said that the country had 1,600 schools with 550,000 learners with 50.8% of them being female. There were 19,000 teachers and 4,000 support staff. He added that there were 13 educational regions in the 13 administrative regions of the country, each headed by a director.
- 20.5 On the structure of the educational system, Mr. Angoro indicated that formal education is provided to learners from grade 1 – 12 and the education system is structured as follows:
- Grade 1 to grade 4 – lower primary;
 - Grade 5 to grade 7 – upper primary;
 - Grade 8 to grade 10 – lower secondary; and
 - Grade 11 to grade 12 – upper secondary.
- 20.6 At the end of each level, learners are required to sit for an examination to progress to the next level. Those who do not pass either repeat or drop out of school.
- 20.7 He indicated that during the 1994/1995 academic year there was a 94 – 97% enrolment rate at primary school and there was about a 30% increase in the enrolment rate for the San community. In 1995, the government organised a conference to address the question of Educationally Marginalised Learners (EML) such as street children, orphans, the San and the Himba. A year later, in 1996, an Inter-Sectoral Task Committee was set up to see how to support Educationally Marginalised Learners.

The San and education

- 20.8 With particular reference to the San community, the Ministry indicated that separate schools, including Village Schools, had been built for San learners. In some of those schools, mother tongue instruction is given up to grade 3. A programme to train San teachers had been instituted.
- 20.9 The General Education Policy provides that learners from grade 1 – 3 be taught in their mother tongue and, to this end, thanks to support from the African Language Project, reading materials had been developed in some San languages.
- 20.10 To encourage more enrolment, the Ministry indicated that San learners were exempted from paying fees – including tuition, hostel and other fees. They were also allowed to attend school without uniforms and were provided with meals when they attended school. Education is free for the San learners from grade 1 – 10 and they were required to pay fees only in grades 11 and 12.
- 20.11 The Ministry noted that San learners do pass their grade 10 examinations but fail to proceed to the upper secondary school level. The Ministry officials noted that this could be attributed to poverty as most San parents do not have money to pay for the fees. They also indicated that by grade 10, most San learners had reached adolescence and preferred to start a family, and that most of them preferred to stay at home and accompany their parents to hunt and gather.
- 20.12 The Ministry officials noted the marked absence of San learners in the tertiary sector. They however noted that two San learners graduated from the Teacher Training College in 2004 and were sent to Tsumkwe and Omaheke. The Ministry also noted that three San students had been admitted into the University of Namibia - two in the first year reading B-juris and medicine, and one in the second year doing agriculture. They were being supported by WIMSA/Namibia. WIMSA (Working Group on Indigenous Minorities

in Southern Africa) also engages in training community leaders in the San communities and the Ministry participates in these training programmes to promote awareness among the San on their constitutional rights and how to access them.

- 20.13 To ensure that the learners were closer to their parents, the government allowed some San learners to stay in informal hostels and they were assisted through the School Feeding Programme, where the government provided one meal a day for the learners. For San learners who were staying with their parents on the farms, the government provided transportation to and from school and they were given one meal a day.

The Himba

- 20.14 The officials of the Ministry informed the delegation that the Himba were generally regarded as rich and were culturally strong. Most of them could be found in the mountainous Kunene region and were part of the Herero tribe, speaking Orti-herero. Most of them had large herds of cattle and also kept sheep, goats and donkeys.
- 20.15 The officials indicated that the Himba were not poor, but were simply scared of modernisation. They added that conventional schools had been established in Kunene region but that the Himba claimed these schools threatened their culture. They noted further that because of the strong affiliation to their culture they would shun anything that threatened it.
- 20.16 The officials informed the delegation that, in 1997, the government commissioned a study of the educational situation of Himba children. The study found that there were about 6,000 Himba children not in school. After the publication of the results of the study, the Ministry came up with a programme called "Mobile School Unit" to take the school to the people. Tents, chairs, furniture and other school equipment and materials were taken to the area and six schooling units were established. Teachers were recruited from within the communities in consultation with the chiefs of the communities.⁵

- 20.17 By 2004, the Ministry had established 30 Mobile School Units, and enrolled 3,000 learners, or 50% of the children that were not going to school; 72 teachers had been trained to teach in those units. Most of the formerly untrained teachers had been trained and had obtained Diplomas in Basic Education.
- 20.18 Due to the poor road network in the region, the Ministry has provided communication facilities to all the units. To keep the children in school, they are allowed to attend school in their traditional attire.

Challenges

- 20.19 The Ministry indicated that the above measures notwithstanding, it was still facing some challenges to improve the education of the Himba. It cited the difficult terrain as a major challenge as many people were reluctant to go and stay to work there. The Ministry also indicated that because of their flamboyant customs, tourists frequent the area and usually distribute sweets to the learners and tobacco to the parents so as to photograph them. Because of this, the children have become very inattentive in class and rush out at the sound of a vehicle with the hope of receiving sweets.

21. Meeting with the Ministry of Lands, Resettlement and Rehabilitation

- 21.1 The delegation of the Working Group visited the Ministry of Lands, Resettlement and Rehabilitation (MLRR or Ministry of Lands) on 27 July 2005. The Head of Delegation, Commissioner Andrew Chigovera, briefed the authorities of the Ministry about the African Commission, the establishment of the Working Group and the purpose of the mission to the Republic of Namibia.
- 21.2 He said that the Working Group was in Namibia to study the human rights situation of indigenous populations in the country and, in particular, to assess the initiatives taken by government to promote and protect the rights of indigenous populations in the country.

5) According to the Ministry officials, the chiefs had warned that the teachers must be recruited locally and must be persons who understand the Himba culture, so they would not teach anything contrary to that culture.

The mission would also discuss with government the laws and policies put in place to promote the welfare of indigenous populations and the extent of success or otherwise, and problems encountered in the implementation of those policies. He said that in Namibia, the African Commission had identified two indigenous groups – the San by virtue of their being original settlers in the country, and the Himba through self-identification. He indicated that due to lack of time, the delegation would not be visiting the Kunene region to meet with the Himba.

- 21.3 After welcoming the delegation, Mrs. Lea Nomola, Permanent Secretary of the Ministry, gave an overview of the mandate of the Ministry. She indicated that the Ministry was established in 1990 as the main actor in the planning and administration of land. It was entrusted with the responsibility of rendering services to eradicate the vast disparities in respect of land distribution, social reintegration and rehabilitation of people with disabilities, along with resettlement of disadvantaged Namibians. The Ministry is responsible for the overall administration of state land, including communal areas.
- 21.4 The Ministry's Directorate of Resettlement and Rehabilitation is responsible for resettlement of landless and displaced Namibians to enable them to attain an acceptable level of social and economic development. It is also responsible for developing and maintaining the capacity for creating both the awareness and economic means, within Namibia, for people with disabilities to become integrated into mainstream Namibian society. This enables them to afford and utilise all means of education, development and employment available to other Namibian citizens.

The resettlement exercise

- 21.5 The Division of Resettlement in particular, is primarily responsible for all resettlement activities in the Ministry. This includes the provision of basic amenities and facilities to landless and destitute Namibians.

- 21.6 Mrs. Nomola informed the delegation that the resettlement takes place in terms of the Land Reform Act and the Resettlement Policy of the government. When a piece of land is acquired, it is advertised in the Government Gazette and a community can apply to be resettled there. She said that resettlement was voluntary and any group of people or individuals was free to apply for a piece of land or to be resettled.
- 21.7 She indicated that there were three categories of persons who could apply to be resettled:
- Category 01 – which is usually marginalized communities with little or no means. This includes people who have neither land nor income nor livestock;
 - Category 02 – people with a little livestock but no grazing land. This includes people who have neither land nor income, but do have livestock; and
 - Category 03 – people with livestock and some resources but no grazing land. This includes people who have no land but have income or are cattle owners, but need land to settle on with their families, or to graze their livestock.
- 21.8 She said that the Ministry believed these categories of people needed to be affirmed and added that the Ministry was focusing on category 01. If no application was received from the latter category, the Ministry would then consider applications from communities in categories 02 and 03.
- 21.9 Conscious of the fact that some communities might not be aware of the availability of land, Mrs Nomola indicated that the Ministry had been proactive and was encouraging communities through sensitisation and the provision of the necessary assistance to enable them to apply on time.
- 21.10 The Division of Resettlement was also responsible for implementing development projects with the aim of improving the economic and social status of the previously disadvantaged communi-

ties. During the past 15 years of independence, projects such as the Excelsior Rural Development Project, Westfallen, Bernafey, Skoonheid, Drimiopsis, Mangheti Dune, Bravo, Tsintsabis, Otjihao, Onandandja, Bagani, Omega and Chetto have been established by the Ministry. Through the resettlement programme, some previously disadvantaged communities, such as, the San, the ex-combatants and displaced farm workers were provided with housing and land for agricultural activities.

- 21.11 Despite a lengthy dispute that occurred between the government and the illegal occupants who invaded government farms during 1998 in the Omaheke, Otjozondjupa and Kunene regions, the Ministry was able to resettle 115 families with 615 dependants in the Kunene and Hardap regions.
- 21.12 Finally, she said that the Ministry was committed to serving the nation in its endeavours to eradicate inequitable access to land resources through efficient and participatory land reform, land management, administration, resettlement and rehabilitation, and reintegration of disadvantaged citizens.
- 21.13 She noted that the “willing buyer willing seller” policy adopted at independence in 1990 had retarded the land redistribution and resettlement programme, and the government had indicated that it would adopt a policy of land appropriation.
- 21.14 She said that about 80% of the population lived in communal areas and most of them did not have security of tenure over the land they occupied. However, the Ministry was taking steps to ensure that they had some security over the land given to them. In the allocation of land, the Ministry ensured gender equality to empower women to have land in their own name.
- 21.15 To ensure that communal land was utilised sustainably and ensure that the rights of all the inhabitants in the community were protected, the Ministry ensured that communal land was not fenced to deprive others of the use thereof. Only the approved 20 square meters allocated per person could be fenced.

The Ministry of Lands and indigenous communities

21.16 The Ministry indicated that it had instituted specific projects to empower marginalised communities in general and indigenous communities in particular. Mrs Nomola indicated that the Ministry was engaged in four projects with the San communities in Caprivi, Omaheke, Ohangwena and Omakoto regions.

21.17 The aim of the projects she said were inter alia:

- To improve food production and ensure food self-sufficiency for the San so as to encourage self-reliance;
- To increase the means of the communities through income-generating activities such as tailoring, carpentry, etc; and
- To integrate the San into the mainstream economy.

21.18 She indicated that the project in Ohangwena region had 133 families residing on 200 hectares of land. The project in Omakoto region had 1,203 families each occupying 4-7 hectares of land and the project in Skoonheid in Omaheke region had 161 families residing in 9,366 hectares. She indicated that the project in Western Caprivi was a cluster of projects consisting of about four different programmes. The projects started in 1990 and had about 2,002 families occupying 2 to 3 hectares each.

21.19 All the communities in the four projects were involved in income-generating activities supported by the government, usually agricultural activities that were either rainfed or irrigated. The government has appointed coordinators for the projects to ensure their proper management and to protect the well-being of the San.

Challenges

21.20 The Ministry informed the delegation that, in trying to empower the indigenous communities, it faced numerous challenges including in particular the fact that:

- The San communities vary considerably both in terms of their activities and in their lifestyle;
- The veld where the San communities used to hunt and gather has changed over time and they are also adapting their way of life to the new situations;
- It is still difficult for most of the San to adapt to the current changes due to inadequate skills;
- There is a very small market for their produce and as such they hardly sell enough to improve their income;
- The distances between the settlements and the service providers are very long and in most cases services providers are reluctant to travel such distances to provide services to the people; and
- The lack of employment opportunities, lack of training and other skilled activities have rendered most of the San poor and dependent on government.

21.21 After the briefing from Mrs. Nomola, Commissioner Chigovera wanted to know:

- Whether the Ministry treated the San as a separate indigenous population requiring special attention or as part of a minority or marginalised group;
- Whether the San were consulted in the conception and definition of development projects they were engaged in; and
- What the impact of the government's projects had been on the welfare of the San.

21.22 The Ministry officials indicated that, while government was striving to deal with the problems of all marginalised communities, it had special programmes to deal with the situation of indigenous communities, especially the San, in view of their historically disadvantaged situation. On consultation, the Ministry indicated that, prior to the implementation of a project, a feasibility study is conducted in which the San are consulted. The study looks at what they would like to do and solicits input from them on the best way to

implement the project. After the consultation, a project proposal is then developed by the Ministry.

- 21.23 The officials added that the San, in terms of their tradition, were always in communal/group settlements, not individual settlements. They indicated that to guarantee their communal rights to land, a lease agreement of 99 years is issued to the community as a whole. The title to the land is issued to the project and not to individuals.
- 21.24 The officials concluded by noting that, in some projects such as in Skoonheid Farm, there were two projects, one for the San community and the other for individuals who were non-San. There had been reports of individuals trespassing onto land occupied by the San to graze their cattle. Such cases were reported to the Ministry's Regional Offices for investigation, and if the problems could not be solved at regional level they were reported to the police and, in some cases, the police had forcibly evicted the trespassers.

22. Meeting with Windhoek-based NGOs

- 22.1 On 27 July 2005, the delegation met with Windhoek-based NGOs working on indigenous issues.
- 22.2 After introducing the delegation, Commissioner Chigovera informed the NGOs of the purpose of the Mission and indicated that, as NGOs working with indigenous communities, the delegation would like to know the major concerns and issues affecting the effective enjoyment of the rights of indigenous populations in Namibia. He said that the NGOs remained the eyes and ears of the African Commission and were the main sources of information for the Commission. He urged the NGOs to be open and frank and provide the delegation with information that would enable it to make an informed opinion and engage government authorities meaningfully.
- 22.3 After the brief introduction by the Commissioner, the NGOs thanked the delegation for the mission and noted that they had been request-

ing the Commission to visit the country for several years. They indicated that they hoped the mission would result in an enhancement in the living conditions of the San. They also indicated that they were sure that the Deputy Prime Minister's tour of San communities, that started a day before the start of the mission, was a smoke screen to demonstrate to the Commission that they were concerned about the plight of the San. They noted that the tour would stop as soon as the delegation was out of the country.

- 22.4 The NGOs indicated that the problem with indigenous populations in Namibia stemmed from the government's belief that identifying groups as such would require different treatment for different groups, and this might encourage a division which the government did not want.
- 22.5 Responding to the above observation, Commissioner Chigovera indicated that governments should know that each group had problems that were peculiar to it and, in solving their problems, development models had to be formulated in consultation with the group – that development models had to be group specific.
- 22.6 The NGOs went on to indicate that, since independence, programmes have been put in place to enhance the welfare of previously disadvantaged communities, in particular the black community. However, there had been no particular affirmative action towards uplifting the welfare of the San. They said that they were doubtful whether the San community were benefiting from the government's resettlement programme, that the San were still very much dependent on government handouts and still abused alcohol and that there seemed to be no clear strategy by government to address the problems of the San. They indicated that, in most of the "so-called" San settlements, there were more non-Sans living there and the government was not doing anything.
- 22.7 The NGOs claimed that there had been no consultation regarding the participation of San communities in deciding on the type of activities they would like to engage in, noting that the government

believed that what was good for one ethnic group would be good for all others. They noted that all other ethnic communities had ruled themselves, but that the San were ruled by a commissioner appointed by the State. Until very recently, the San had had no chiefs and even today most of their chiefs were yet to be officially recognised by the government. The NGOs added that had it not been for pressure from civil society organisations, the government would have abandoned the San as there did not seem to be any commitment to address their plight. The NGOs were of the opinion that, given their low population, the government did not regard them as a threat politically and could afford to ignore them. They indicated that the government's policy was on paper, with very little implementation.

- 22.8 The NGOs also indicated that there was deep historical stereotyping of the San communities and this had led to their continuous marginalisation. They noted that other communities regarded the San as lazy, drunks, thieves and primitive. This stereotype and poor public perception is manifested, according to the NGOs, even among highly placed government officials. They also indicated that most commercial farmers, as a result of this stereotype, believed that the San should not be paid and as a result were not paying them the minimum wage prescribed by law.
- 22.9 On education, the NGOs indicated that very few San learners completed secondary education and even fewer proceeded to tertiary education. They added that mother tongue education for the San learners was limited to a few districts and that this was an initiative by WIMSA.
- 22.10 They concluded by stating that the government could do more to assist the San, if the political will was there.

23. Meeting with the Law Society of Namibia

- 23.1 The delegation met with the Law Society of Namibia on 27 July 2005 at its premises. The Head of the Delegation, Commissioner Andrew

Chigovera, briefed the members of the Law Society about the African Commission, its establishment and mandate; the establishment of the Working Group and the purpose of its mission to the Republic of Namibia. He informed the Law Society that the Working Group plans to undertake similar missions to other African countries with indigenous populations, noting that the ultimate goal of the missions was to come up with a general principle or minimum standard for all countries which will assist them to report to the African Commission during the submission of their periodic reports.

- 23.2 He said that the African Commission regarded the bar associations of different countries as major partners in the promotion and protection of human rights and that was why the delegation was visiting the Law Society of Namibia. Commissioner Chigovera concluded by indicating that the delegation would like to be informed about the human rights situation of indigenous populations in the country, and in particular, the legal protection put in place to ensure the enjoyment of their rights.
- 23.3 The members of the Law Society indicated that the organisation had not undertaken any specific activity relating to the human rights of indigenous populations in the country. The members wanted to know whether law societies in other countries had developed activities on how to deal with the rights of indigenous communities.
- 23.4 Commissioner Chigovera indicated that the Working Group had not come across any law society that dealt with the rights of indigenous peoples, noting that most law societies had in most cases instituted class actions to deal with human rights violations involving vulnerable communities. He added that, in some countries where there was hostility towards human rights organisations, the law societies were the ones that stood up to defend the human rights of the people.
- 23.5 The Law Society indicated that it focused on human rights in general, noting that three years ago it established the Rule of Law Trust focussing on constitutional matters and on cases of a non-commercial nature.

- 23.6 Commissioner Chigovera indicated to the Law Society that Namibia had ratified a number of human rights conventions, among them, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and that the latter Convention obliged state parties thereto to institute affirmative action to improve the welfare of indigenous and other vulnerable groups. He added that the Namibian Constitution did not have any positive discrimination provision dealing with the situation of indigenous populations and that the constitution provided that any international treaty ratified by the State automatically became part of domestic law. He asked why the Law Society was not challenging the government to meet the international obligations that it had voluntarily entered into.
- 23.7 The Law Society noted in response that the government would not cooperate, adding that there was an earlier decision of the Human Rights Committee where the latter had found that a government policy was discriminatory and urged the government to take remedial action. The government had since done nothing to remedy the situation. The Law Society added that there was a rift between the government and human rights NGOs in some respects, and between the government and the legal fraternity.
- 23.8 The Law Society then went on to say that, as far as indigenous peoples were concerned, affirmative action had not benefited them in any way, noting that affirmative action had benefited only a small group of people most of whom should not even have qualified for affirmative action. They added that the problem with the affirmative action policy was that there was no sunset clause, and this was being abused by the authorities.
- 23.9 The Director of the Law Society concluded by noting that the Society had a lot to do on human rights in general and on the rights of indigenous populations in particular, and suggested that the SADC Lawyers Association should be involved in public awareness campaigns on the human rights of indigenous populations in the region and present reports to its Annual General Meetings.

23.10 The Commissioner urged the Law Society to apply for Observer Status with the African Commission.

24. Meeting with the Ombudsman of Namibia

24.1 The delegation met with the Ombudsman of Namibia on 28 July 2005. The Head of Delegation, Commissioner Chigovera, introduced the delegation and briefed the Ombudsman about the African Commission and its mandate. He explained the processes that led to the establishment of the WGIP and the mandate of the Working Group. He informed the Ombudsman that the visit to Namibia was just the second country visit of the Working Group after the visit to Botswana in June. He indicated that the delegation was calling on the Ombudsman's office to learn about the responsibility of the office, in the protection of human rights generally and in the protection of the rights of indigenous populations in particular.

24.2 In response, the Ombudsman thanked the delegation for finding his office worthy of the visit and said that he had been in the office for just one year and, as such, was still finding his feet as Ombudsman. Regarding the mandate of the Ombudsman, he informed the delegation that the Ombudsman of Namibia combined the mandate of Ombudsman with that of a National Human Rights Commission. That the Ombudsman investigates complaints of utilisation of national resources, maladministration, misappropriation of resources and human rights abuses.

24.3 The mandate of the Ombudsman is limited to public institutions. He cannot investigate the private sector. However, when it relates to human rights, he can investigate private bodies if a violation has been detected.

24.4 The Ombudsman indicated that his office relied on the public submitting complaints so they can be investigated. If there are no complaints, he cannot invent them. He noted however that the office was empowered to initiate an investigation of its own volition where it suspected wrongdoing.

The Ombudsman and the protection of indigenous populations

- 24.5 The Ombudsman informed the delegation that he had not received any complaint from any indigenous community about a violation of their human rights. He said that the office had received a complaint from a San community on their resettlement, and liaised with the Ministry of Lands to see how that community could be resettled but had very little cooperation from the Ministry.
- 24.6 He said that, as far as his Office was concerned, the major area of concern for indigenous populations in general and the San in particular was the high number of children not attending school.
- 24.7 He said that his Office faced a number of challenges, such as inadequate human resources, noting that there was only one office in the capital, 2 regional offices, 10 investigators and one director. There was therefore insufficient manpower to undertake a human rights awareness campaign across the country.
- 24.8 Commissioner Chigovera suggested to the Ombudsman that he could partner with NGOs to assist his office in the sensitisation campaign, and NGOs should also be encouraged to bring human rights abuses against indigenous communities to the attention of the Ombudsman.

25. Meeting with the Ministry of Agriculture

- 25.1 The delegation met with officials of the Ministry of Agriculture on 29 July 2005. The meeting was attended by, among others, the Deputy Permanent Secretary of the Ministry, Mrs. Anna Shiweda. The PS introduced the other officials of the Ministry and indicated that she had invited all the high level officials of the Ministry so as to be able to respond, as best as they could, to whatever questions the delegation might have.
- 25.2 After the introduction, Commissioner Chigovera introduced the delegation and briefed the officials about the African Commission,

its establishment, mandate and activities. He also explained the process leading to the establishment of the Working Group and the purpose of the mission of the latter to Namibia.

- 25.3 He said that the delegation would like to know from the Ministry the legal, institutional and other measures that had been put in place to improve the welfare of indigenous communities in the country, including the steps taken, being taken or likely to be taken by the government to alleviate the effects of the long history of exclusion and marginalization of the San communities, the impact of those measures and problems hindering the effective implementation of those measures, if any.
- 25.4 The Commissioner indicated that the delegation would also like to know the number of San covered in the Ministry's projects, the effect of the decline in employment in the agricultural sector on the San communities, the land rights of the San and whether those working and residing on commercial farms had residential rights on those farms.
- 25.5 The Commissioner concluded by indicating that the delegation would like to be informed about any activity being undertaken by the Ministry to improve the lives of indigenous communities.
- 25.6 In response, the Deputy Permanent Secretary began by thanking the delegation for the visit and explained the mandate of the Ministry, indicating the activities the Ministry was involved in. She indicated that the Ministry was mandated to provide agricultural and water services to all the people in Namibia – including the San and Himba.
- 25.7 She said that the government had increased rural water supply from 30% at independence in 1990 to 80% in 2005. She noted that while performance in the area of sanitation was not as good, the government had also recorded an increase in sanitation services from 10% to 45% within 15 years, adding that there had been a marked reduction in water-borne diseases and the standard of living of the people had improved.

- 25.8 Regarding activities involving indigenous populations, the Ministry indicated that it was working closely with some indigenous communities to improve their standard of living. It indicated with respect to the Himba that, because they keep large herds of cattle, the Ministry was providing them with services such as water and veterinary and training programmes to enable them to look after their cattle properly. The officials also indicated that the government was trying to encourage them to produce for the market so that they could increase their income.
- 25.9 Regarding the San, the officials indicated that they were just coming into agriculture and it would take time for them to adapt. The government had introduced agricultural training for San farmers and provided them with farming tools including seeds. The government had also introduced water points at strategic agricultural areas to pull them together so as to introduce crop farming and later live stock farming to them. Training centers had been established in the regions to assist in agricultural training.

26. Meeting with the University of Namibia – Human Rights and Documentation Center

- 26.1 The delegation met with lecturers of the Human Rights and Documentation Center, School of Law of the University of Namibia on 29 July 2005. In attendance were Prof. Manfred Hinz, Dr. Margaret Munalula and Dr. Sylvia Duo.
- 26.2 After welcoming the delegation, Prof. Hinz invited the delegation to brief the officials on the purpose of the mission and what was expected from the Center. Commissioner Chigovera introduced members of the delegation and thanked the Center for agreeing to meet with the delegation.
- 26.3 He briefed the lecturers about the African Commission and the process that led to the establishment of the WGIP. He said that the delegation was visiting the Center to learn from the latter about the human rights situation of indigenous populations in the country, the

legal, institutional and other measures put in place by the government to protect their rights and the impact of these measures and the activities of the Center in this regard, if any.

- 26.4 In response, Prof. Hinz noted that, in many African countries, there has been a reluctance to accept the concept of indigenuity and to treat certain groups as more indigenous to Africa than others. He said that the situation in Namibia was no different and, as such, there were some leaders in government who saw no reason why the Himba, or even the San, should be treated differently.
- 26.5 He said that the San in particular had been disadvantaged throughout history and this had kept them poor, marginalised and excluded from the mainstream economy. Given their vulnerable conditions, they were now open to temptation and subjected to exploitation. He indicated that many San communities did not have protection in terms of their communal rights to land, noting that the Khwe for example, see Western Caprivi region as their ancestral home as they have lived there for a long time and continue to live there and they can rightly consider the area their communal land. He said with respect to the San in Omaheke region that it might be difficult to allocate communal land to them because the region was made up of many different groups, including the Herero and Nama. He said that it would be difficult to establish pockets of land across the region for the San.
- 26.6 On recognition of traditional leadership, Prof. Hinz indicated that the government had recognised some traditional leaders from both the San and Himba communities, but had been reluctant to recognise more. He said that government's reluctance could be explained by the fact that such recognition would create more administrative units and require government to provide resources to maintain services in those administrative units.
- 26.7 On political representation, Prof. Hinz indicated that there was a San Member of Parliament and a Deputy Minister from the Himba community. He said that the San MP, who was in his second term, had

come from the Nyae Nyae San community in Tsumkwe District and it was generally believed that he was not even known by other San communities. He noted that the correct approach to ensuring proper representation would be for the government to adopt positive discrimination to advance the political representatives of vulnerable groups such as the San.

- 26.8 He noted that, because English was the only language used in Parliament and considering that many indigenous populations were not well educated, even if they went to parliament, they would find it difficult to make meaningful contributions in the debates, and some would simply not attempt to stand because of the language barrier.
- 26.9 On education he said that there had been some slight improvement in the enrolment level since independence, but noted the high drop-out rate among San learners and the marked absence of San students at tertiary level. He said that, from a legal point of view, mother tongue education was possible for the first three years of primary education. However, this was not happening due to lack of trained teachers and the difficult terrain.
- 26.10 Prof. Hinz informed the delegation that some San communities were of the opinion that they were being victimised because of their collaboration with the former apartheid regime.
- 26.11 Commissioner Chigovera noted in response that it would be unfortunate if the San were to be victimised for their collaboration with the apartheid regime because the whole essence of independence was to correct the injustices of the past and uplift the standards of living of the people, especially the historically disadvantaged such as the San. He added that independence should not be a reversed injustice in the form of revenge.

PART IV

27. Meeting with San Communities

27.1 After meeting with government officials, NGOs and other institutions working on human rights generally and the rights of indigenous communities in particular, the delegation held meetings with San communities in four regions - Caprivi, Omaheke, Kavango and Otjozondjupa.

28. Meeting with Residents of Masambo Village

28.1 Masambo Village is along the main highway between Windhoek and Katima Molilo, the capital of Caprivi region. It is situated between Omega III and Kongola. According to the Headman of the village, a 2004 census put the village population at 276 inhabitants.

28.2 The delegation met with the residents of the village on 31 July 2005. There were about 57 residents in attendance including children, women, the Deputy Headman and the Headman. Speaking through an interpreter, the Headman welcomed the delegation and thanked the residents for responding to his call to assemble at short notice. He then asked the delegation to inform the residents of the purpose of its mission to the village.

28.3 Commissioner Chigovera thanked the Headman and all the residents for agreeing to meet with the delegation at short notice and informed them that the delegation was not a delegation sent by the Government of the Republic of Namibia. He briefed the residents about the African Union, the establishment and mandate of the African Commission and the establishment and mandate of the Working Group. He informed them that the delegation had been speaking to government officials and NGOs and other institutions in the capital Windhoek about the human rights conditions of indigenous peoples in the country, and thought it was also necessary to visit and

hold discussions with the indigenous communities themselves on how they were being treated.

28.4 He informed the residents that the delegation was consulting San communities to see the conditions under which they were living and to hear from them regarding the problems, if any, they might be having in the enjoyment of their human rights. He explained that, after gathering the information from the government, the indigenous peoples themselves and all relevant stakeholders, the delegation would compile a report that would be submitted to the African Commission for consideration and adoption. This report would contain appropriate recommendations on how the conditions of indigenous populations in the country could be improved. He said that the report would be sent to the government and the African Union, and the African Commission together with its partners would work closely with the government to ensure the implementation of the recommendations.

28.5 Commissioner Chigovera concluded his briefing by urging the residents to be frank in their discussions with the delegation as it was only if they provided the delegation with accurate information, that it would be properly informed and make appropriate recommendations to the government.

28.6 After the briefing by the Commissioner, the residents started informing the delegation about their living conditions in the village. They raised concerns ranging from education, water and healthcare to unemployment and hunger.

Education

28.7 The village has a one-roomed primary school about 4m wide and 7m long (28m²) built with zinc. The school provides instruction for pupils from grade 1 – 3 only, and has a total of about 27 pupils and 2 teachers. Due to insufficient classrooms, the classes were usually combined and the teachers taught the pupils together.

-
- 28.8 After grade 3, the pupils are transferred to another school in Omega III Village, 10.4 km from Masambo Village. After grade 7, those who succeed in the grade 7 examinations are either enrolled into the Omega I Combined School or the Kongola Combined School, both of them about 80 km from the village.
- 28.9 The residents informed the delegation that the school needed to be provided with sufficient teaching and writing materials. One of the teachers in the school informed the delegation that there were insufficient materials such as chalk, boards, books and even a store to keep reading materials. He added that it was not proper for two teachers to teach grades 1 – 3, noting that there should be one, and if possible, two teachers per class. He also said that the government did not provide the teachers with any accommodation. He cited the case of the principal of Omega III as an example noting that the principal, together with another teacher, were staying in the storeroom of the school at Omega III. He indicated that the government should provide permanent buildings for teachers if it wanted teachers to come and stay in the village. The Headman of the village added that he had applied for permanent structures both for teachers and for the school, but had received no response.
- 28.10 Regarding mother tongue education, the Headman indicated that Khwedam, the language used by the San in the region, was still being developed, adding that there were plans to introduce mother tongue education up to grade 3 by the 2006/2007 academic year. For the moment however, he said that English was the only medium of instruction.
- 28.11 The residents complained that there were learners in the village who had passed the grade 10 examinations, but due to poverty could not continue their education.

Water, healthcare and hunger

- 28.12 The residents complained that there was only one water pump for the entire village, and, according to them, the tap belonged to the school. They said that the water was very dirty and of very poor quality. They also said that there was no clinic or health centre in the village. Patients have to travel to the nearest clinic in either Handara or Kongola some 75 – 80 km from Masambo. In some cases, if a resident of the village died in hospital, they were compelled to bury the deceased where he/she died because of lack of transport. The residents complained that health officials who visited the village on immunization campaigns were rude to the villagers and did not speak the language of the area. As a result most of the people could not understand them and could not cooperate with them.
- 28.13 The Headman informed the delegation that the whole village would have attended the meeting but, because of hunger, most of the villagers had gone into the forest to gather wild fruits. He noted that hunger was one of the most serious problems in the village.
- 28.14 The hunger was exacerbated by the fact that there was no market around the village. The residents had to travel long distances, usually to Kongola or Divundu, to buy food whenever they had money. Secondly, they had been prohibited from keeping cattle, as the government claims that it is incompatible with Parks Management. As such, they were forced by government to sell all the cattle they had. At the same time, they were not allowed to hunt animals in the reserves to supplement their nutrition. Living in an area infested with wild animals, including elephants and rhinoceros, they claimed that their crops had always been destroyed by these animals and that, each time they complained and asked for compensation, their complaints fell on deaf ears.
- 28.15 The Headman of the village also informed the delegation that the village was the only village in the region where pensioners were required to travel more than 10 km to receive their pension allowances. He noted that there were pay points in all the other villages

except in Masambo. He said that the road to Omega III where the pensioners were required to travel for their money was very dangerous because of wild animals and the heavy traffic. Some of the pensioners were too old to travel that distance and some were blind while others had other disabilities. He urged the delegation to bring this to the attention of the authorities in Windhoek.

- 28.16 Other speakers at the meeting indicated that the Khwe (the San Community in Western Kaprivi region) were a forgotten people, noting that they were promised several things at independence and during democratic elections. However, they had received nothing to date. They said that the government was not assisting them in any way, that they were not regarded as human beings.
- 28.17 The residents indicated that the Councillor of the district who is resident in Kongola does nothing to assist the people. They complained that the Councillor had never visited the village since he was elected. They said that they had petitioned the Councillor on several occasions to visit them to see their deplorable conditions but he had never visited, even though he drives past the village on many occasions. They said that the Councillor concentrates on Kongola and had been saying that since they voted for the Republican Party, (the main opposition party in the country) they would not be helped. The residents said that they wanted to know whether the Councillor was a Constituency Councillor or a SWAPO Councillor.
- 28.18 They informed the delegation that the last drought relief they had received was in January 2004 and that they had had no harvest in 2005 due to drought and destruction of their fields by elephants. That was why they needed the Councillor to give them food.
- 28.19 Another major problem in the village was that of poverty and unemployment. The residents noted that the majority of the people in the village were unemployed and that there was no income-generating activity in the village. Most of the people rely on the meagre monthly pension. They said that, unlike in other San communities,

the Khwe were not employed to do menial jobs such as watchmen, cleaning, etc.

- 28.20 It is worth mentioning here that when the delegation paid a courtesy visit to the Councillor prior to meeting the communities, he informed the delegation that he already knew what the people would tell the delegation. He said that he knew the people were going to say they were hungry, that they had not been given food relief for some time. He informed the delegation that he was making arrangements for food relief for them and that rice would be distributed to the residents soon.
- 28.21 The delegation did inform the residents about the meeting with the Councillor and what he said but they claimed he was lying.

Recognition of chieftainship

- 28.22 The residents complained that, in spite of the fact that the Khwe have lived in Western Caprivi for a very long time with a recognised traditional ruler, the current SWAPO government had refused to recognise the Khwe Chief. They said that several letters had been addressed to the government on the issue, but there had been no response. They said that the reason their grievances were not addressed was because they had no leader who could speak for them.
- 28.23 They said that they were currently being claimed by two neighbouring ethnic groups, the Mbukushu and the Manyoni, who both claimed the Khwe were under them. They said that they could not be ruled by these groups because they were culturally and linguistically very different. They added that because they had resisted being ruled by either of these groups, all their complaints had been blocked by the chiefs of these communities.
- 28.24 It should be noted here that the Khwe community lives in an area of about 200 km² from Divundu to Kongola.

28.25 The residents of Masambo also informed the delegation that they were completely cut off from receiving information and from communicating with the outside world. They claimed that they could not receive radio signals from Radio Namibia (but were receiving from Botswana), nor telephone or electricity.

29. Meeting with Residents of Omega III Village

29.1 Ten kilometers from Masambo Village is Omega III Village. The Omega III structure of the village is no different from that of Masambo Village. However, unlike Masambo Village, Omega III has some modern structures. The Omega III Primary School goes up to grade 7 and is a well built school.

29.2 The delegation met with residents of Omega III on 31 July 2005. Commissioner Chigovera introduced the delegation and briefed the residents about the African Commission – its establishment, mandate, the factors leading to the establishment of the Working Group and its mandate. He also informed the residents of the purpose of the mission to Namibia.

29.3 He called on the residents to inform the delegation of their living conditions, the extent to which their human rights were being promoted and protected by the government, and to indicate any problems they might be encountering in the enjoyment of their human rights.

29.4 The residents informed the delegation that they faced numerous difficulties in the village ranging from poor health, unemployment, education for the youths, and so on.

Health

29.5 The residents complained that there was no clinic in the village. They have to travel long distances to go for treatment. They claimed that the nearest clinic in Chetto, approximately 80 km from the vil-

lage, is constantly non-operational. They are therefore usually forced to travel to Kongola or Katima Mulilo, about 100 – 150 km away.

- 29.6 They claimed that their health situation had been made worse by the poor quality water available to them. They showed the delegation a sample of the water in a bucket which they said had brown corrosive substances that would settle at the bottom of the bucket within a few minutes of being fetched. They claimed that, if used to wash white clothes, the water would change the colour of the clothes to brown. Some of the residents claimed that the water was responsible for the chest infections suffered by many residents in the village.

Education

- 29.7 On education, the residents indicated that the school lacked much school equipment to ensure its effective functioning. They noted that, for a school that provides instruction up to grade 7 level, five teachers were insufficient. They said that the school needed at least two teachers per class. They added that apart from inadequate teaching staff, the school also had insufficient teaching and reading materials. They complained about the lack of accommodation for teachers, indicating that the principal of the school was sharing the school storeroom with another teacher.
- 29.8 Commissioner Chigovera asked them whether they had brought these problems to the attention of the education authorities, and they said they had not because the government did not respond to their petitions.
- 29.9 They said that, unlike in other main schools in the region, the Omega III Primary School had no cleaner, no receptionists nor a secretary. They said that these were jobs that could have been taken up by some of the unemployed youths in the village. They also added that the school had no electricity and the village did not receive any radio or television signal.

29.10 The residents also requested that the government build a hostel in the village for learners coming from Masambo, claiming that it was too dangerous for the learners to travel the 10 km road to go to school in Omega III. They said that the government should also provide the school with cooks to prepare food for the learners, claiming that there was a School Feeding Programme that was not effective because there were no cooks.

Hunger and poverty

29.11 The residents informed the delegation that they were living in a game reserve infested with wild animals. They said they had lived in the area for a very long time and wanted to continue staying there. However, they needed the support of the government because the government had stopped them from keeping domestic animals such as cattle, goats or donkeys and had prohibited them from hunting the animals in the reserve. They also indicated that their crops were usually destroyed by elephants and other wild animals in the reserve and, as such, they were usually short of food. Whenever they reported the destruction of their crops to government and requested compensation, they claimed they were often ignored. They said that if they killed any of the animals that destroyed their crops, they were liable to prosecution and, if found guilty, to imprisonment for up to three years.

29.12 They complained that they were entitled to food relief in case of poor harvest or where their crops had been destroyed by animals. However, there had been no food relief since August 2004. They added that a food ration was promised to them in January 2005 but in May food was brought for orphans only and since then there had been no further supplies, even for the orphans.

29.13 The residents said that the San Khwe were not regarded as equals in Namibia, that they were considered inferior to other ethnic groups.

- 29.14 A representative from the Karama San Trust informed the delegation that the Trust was established in 1996 to promote the rights of the San in general and the Khwe in particular. He said that the Trust had applied for the establishment of a Conservancy in Western Caprivi for the Khwe but that the government had replied saying that the Khwe did not have a right to the area. He said that when animals were killed, especially by tourists, they were usually sent to Kavango or to Manyoni village since, according to the government, the San did not have a right to the land, were not recognised and, as such, could not benefit as a people from the killing of animals.
- 29.15 He said that the community had applied for a Khwe chief so that they could be recognised as an administrative unit but, through the influence of two other chiefs from Manyoni and Mbukushu, the government had refused to recognise their chief. Both villages claimed that the Khwe were administratively under their jurisdiction.
- 29.16 The residents complained about the destruction of their crops by wild animals and that when they reported it to the authorities no action was taken. That they were not even compensated for the loss.
- 29.17 They claimed that the government had provided land to other tribes and other San communities around the country, but failed to recognise the communal right of the Khwe to the area they had been occupying for decades.
- 29.18 They said that they needed good shelter, that the homes they lived in were usually destroyed during the rainy season and that the government should construct good and permanent structures for them as it had done for other villages such as Omega I, Divundu and Chetto. One old man informed the delegation that he had lost two of his houses to fire due to the thatched nature of the houses. They also complained about the lack of employment in the village and requested the government to initiate development activities that could generate income for the people.

- 29.19 The residents complained about the government's decision to stop them from keeping domestic animals such as cattle and goats. They said that these animals were helping them during drought as they could sell some of the animals and buy food. They informed the delegation that, in Omega I, residents were allowed to keep animals and the government had built a 1 km fence around the village to separate it from the game reserve and prevent wild animals from getting into the village. They said the same could be done for Omega III.
- 29.20 The spokesperson of the village concluded by saying that they had often been visited by different organisations from around the world – United Kingdom, Germany, Denmark, United States – to find out about their conditions but there had been no improvement in their living conditions, noting that such visits had become routine to them. He said that they believed the Khwe were being used as research tools for young graduates from the university to go and test their skills. He indicated that, as an African organisation working for the continent as a whole, they were hoping that their grievances would be brought to the attention of the President of the Republic and, when they received positive results, they would always remember that the African Commission had visited the village.
- 29.21 Commissioner Chigovera assured the residents that all their grievances would be addressed to the relevant government authorities through a report that the delegation was going to prepare. He also said the report would contain appropriate recommendations on how those grievances could be addressed and the Commission would work with the government to ensure the effective implementation of the recommendations.

30. Meeting with Residents of Mushanshani Village

- 30.1 Mushanshani Village shares a border with the Divundu River. Unlike the other two villages visited, the village had modern structures, a police post, a prison and some commercial activities. The delegation also saw large herds of cattle being shepherded by residents of the village.

- 30.2 The meeting which took place at the residence of the Headman of the village was also attended by the Headman and some residents of a neighbouring village called Mutciku.
- 30.3 The delegation met with residents of the village on 31 July 2005. The Headman of Mushanshani Village welcomed the delegation as well as the headman and residents of Mutciku Village. He informed the residents that the delegation would like to have a meeting with them and they should cooperate with the delegation. He then called on the delegation to inform the residents of the purpose of its mission to the village.
- 30.4 Commissioner Chigovera, Head of the Delegation, thanked the Headman of the village for assembling his subjects at very short notice and also thanked the Headman of Mutciku Village for attending the meeting. He informed the residents that the delegation was in the country to assess the level of protection of the human rights of indigenous communities in the country and discuss with various stakeholders, including the government, on how to improve the lives of indigenous peoples.
- 30.5 He informed them about the African Commission and the mandate of the Commission noting that the delegation was not from the government of Namibia but rather an AU mandated body. He said the residents should be free to inform the delegation of their living conditions, the enjoyment of their human rights, impediments to the enjoyment of their rights, if any, assistance from government, and any other information they would like the delegation to know and bring to the attention of the government.
- 30.6 After the Commissioner's briefing, the residents began informing the delegation of their conditions in the villages. The Headman of Mutciku informed the delegation that the Khwe were a completely forgotten community in Namibia, indicating that in all the Khwe villages there was a marked evidence of poverty, unemployment and hunger. Children drop out from school because of hunger and follow their parents into the bush to fetch wild fruits to eat. He added

that those who managed to go to school were not employed, noting that most of the menial jobs around the village were given to non-San residents. He said the government's explanation had been that the San Khwe youths were not qualified enough for the jobs, but it had always turned out that most of the non-San that were recruited were even less qualified than the San who were not employed. They also complained about the absence of tap water, that they usually get water from the rains and from the river. However, the river was far away and many people found it dangerous. He said other villages, like the Mbukushu across the river, had electricity but none of the Khwe villages had electricity. They requested the government to provide them with proper houses as it had done for other villages. They said the government had started a housing project for the village and built 12 houses in 1998 but this had since stopped.

- 30.7 Other residents complained of the lack of government services such as shops, pay points for pension, hospitals etc. They claimed they had to travel across the bridge to buy food and other household items and old people had to cross the bridge to go and receive their pension. They claimed many old people in the village did not have Identification Documents (IDs) to certify that they were Namibians and as such they could not be paid their pension allowances. Due to the lack of IDs, some of the people who had been employed by the Correctional Services Department were summarily dismissed. However, the residents believed that they were sacked because the government wanted to recruit non-Khwe. They indicated that if the government's main reason was that they did not have IDs, they could have been assisted in getting them or those who had the ID could have been recruited, but the government went ahead and employed people from outside the village.
- 30.8 They also informed the delegation that they had realised that prisoners in the prison located in the village were "employed" and paid some stipend and they wondered why the jobs should not instead be given to people outside who have more responsibilities. They wanted the prison authorities to consider giving some of those jobs to the Khwe in the village. They said that, during the construction

of the prison and many other projects in the village, the government had consulted the Headman to provide land promising that the projects would generate jobs and the Khwe would be given priority during recruitment. However, after the completion of such projects, it always turned out that not a single San Khwe was employed. They said that even though the prison was built in a San area, there was not a single San employed there as a prison official. They said this scenario had created tension between the Khwe and other ethnic groups resident and working in the village.

30.9 They claimed the government had failed to respond to their petitions to address the situation and had completely ignored them. They said they had tried to grow crops to feed themselves so they would not depend on government but this had not been successful as the soil was not very fertile. They complained of hunger and noted that the government did not care about their plight. They cited an instance when there was serious hunger in the village and the Correctional Services authorities had cultivated surplus maize to feed prisoners. During that season, they alleged that the Correctional Services had had surplus harvest, but rather than give the surplus to the hungry residents of Mushanshani Village, the Correctional Services had chosen to destroy the surplus. When the village Headman enquired why they had done that when people were starving in his village, the authorities told him that if they had not destroyed it the villagers would have stolen it. The Chief brought this to the attention of the Councillor of the area but nothing was done.

30.10 It is worth mentioning here that, while the delegation was in the country, there was a report of tonnes of maize rotting in a warehouse in Katima Molilo, in Caprivi region, while hundreds of residents were starving in the western part of the region.

30.11 On the appointment and recognition of a Khwe chief, the residents indicated that, since the death of the Khwe Chief long before independence, the government had been reluctant to appoint a new chief. They had written several petitions to the government to no avail. They said that since they had no chief, the Mbukushu Chief

was claiming that the Khwe were under his jurisdiction, something they claimed would never happen.

30.12 They said they would never be ruled by the Mbukushu and that they wanted their own chief. They said the Ovambo (the majority ethnic group in the country) who come to work in the village do not respect the authority of the San headmen. That they always said a San headman would never lead them. They also complained that the Ovambo had always discriminated against the San communities. They said this could be attributed to the fact that government had always regarded the Ovambo as the people who sacrificed for the liberation of the country.

30.13 On education, the residents said that education was free up to grade 10 for San learners but, after that, the parents had to bear the costs. They said that, due to poverty occasioned by unemployment, most of the parents could not afford to pay fees for their children. They said that, even in the primary school, the government insisted that the children had to be properly dressed although some parents could not afford to clothe their children.

30.14 They said that the toilets of the primary school in the village, damaged since 1995, had not been repaired. While the toilets for teachers were repaired, those for the learners had been left unattended and the learners were forced to go into the bush, far away from the school, each time they needed to use the toilet.

31. Meeting with the Management of the Nyae Nyae Conservancy

31.1 The delegation met with the management of the Nyae Nyae Conservancy in Tsumkwe district on 1 August 2005. Commissioner Chigovera informed the members about the African Commission, the Working Group and the purpose of the mission to Namibia. He said the delegation would like to learn about the concept of the conservancy and how it benefits the local people, in particular the San.

- 31.2 The Management informed the delegation that the Nyae Nyae Conservancy was the first Conservancy Gazetted in the Community-Based Natural Resource Management (CBNRM) program in 1998. Nyae Nyae Conservancy is one of five conservancies in Namibia that have hunting concessions. It is the second largest conservancy in Namibia and encompasses approximately 9,030 km² of Kalahari woodlands adjacent to the Kaudom Game Reserve. The Nyae Nyae Conservancy was founded by one of Namibia's most marginalized ethnic groups, the Ju|'hoan San. The Conservancy (excluding the district settlement of Tsumkwe) has about 770 adult members, which represent a total population of approximately 1,800-2,000 San people. With a low population density of only about 2,000 inhabitants in 30 communities, it is an ideal environment for wildlife. To be a member of the Conservancy, one has to be 18 years and above, San or a non-San who has lived in the area for more than five years.
- 31.3 Trophy hunting in the Conservancy makes up only 12% of the total revenue for the CBNRM program, but it is vital to some of the conservancies. This is particularly true for Nyae Nyae Conservancy, located off the major tourist route in Namibia. It is three hours off the paved road and ends at the Botswana border facing a high security fence.
- 31.4 Historically, the Ju|'hoansi were a skilled hunter-gatherer society moving seasonally over vast distances between Botswana and Namibia. The area they now inhabit is roughly one-tenth of the 90,688 km² that an estimated 1,200 Ju|'hoansi occupied in the 1950s. The reduction in land, combined with the loss of traditional skills in the younger generation, is increasingly forcing the Ju|'hoansi to adapt to a more Westernized society. However, the remoteness of the area and the challenges of developing an effective, culturally-adaptive educational system for the San have yet to counter the Ju|'hoansi's extremely low levels of literacy and employment. Furthermore, efforts to introduce the traditional hunter-gatherer Ju|'hoansi to sedentary agricultural activities (i.e. livestock and crop production) have had limited success.

- 31.5 With support from the donor community, conservancy members have adopted land-use zoning and established game watering points. Game has been re-introduced to bolster the recovery rate and financial viability of the Conservancy. The United States Agency for International Development (USAID), for instance, funded the re-introduction of 1,826 game animals into the Conservancy between 1999 - 2003. As a result of these efforts, the Ju|'hoansi have been able to rebuild their wildlife populations. From 1998 to 2003, for example, the number of springbok increased from 0 to 880, the number of Oryx increased from 429 to 1,171, and the number of kudu increased from 283 to 947. More benefits are generated from trophy hunting, tourism, and sustainable game meat harvesting. There is also potential for the Ju|'hoansi to benefit from game farming and the sale of high-value species such as their buffalo and roan antelope. The members also have the rights of ownership over huntable game, the rights to revenues from the sale of game or game products and rights to tourism.
- 31.6 With the growing wildlife populations and the recent opening of a border gate between Botswana and Namibia on the eastern boundaries of the Conservancy, interest is being shown by the private sector in the establishment of an up-market tourism lodge in the Conservancy. This will provide additional revenue and jobs for the conservancy members over the years to come.

Living conditions

- 31.7 The delegation was informed that living conditions for the San communities within the Conservancy were much better than those not living in a conservancy. They said there were still some major challenges facing the Conservancy which affect the livelihood of the residents. These challenges include inter alia, the manner in which the Conservancy is managed – decisions were taken without proper consultation. That there was lack of follow-up on decisions. They also indicated that there was lack of cooperation between the Ministry of Health and the Ministry of Tourism on the provision of basic services in the Conservancy.

- 31.8 On education, they indicated that the Conservancy had village schools where teachers had been trained to teach in the San language (mother tongue) up to grade 4. This training was done with the support of WIMSA Namibia. After the village school, the pupils were transferred to other schools in Tsumkwe, the capital of the district for them to continue school.
- 31.9 The Management Committee observed that San learners faced a lot of difficulties when they were transferred from the village schools to the regular school in Tsumkwe. These difficulties included inter alia, the language of instruction, (there was no mother tongue instruction after the village schools), insufficient food supply in the hostels, overcrowding and poor hostel conditions, the theft of their belongings and regular insults from other learners and sometimes from teachers. The Committee also said the hostels were very busy with cars moving in and out the compound at any time. One Committee member compared the hostels to a prison camp. They also said learners and teachers had been found drinking alcohol together and spending much time together. They characterized the education environment in the area as one of indiscipline. They also indicated that San learners faced discrimination from other learners and sometimes from the teachers and that there were many cases of San learners getting pregnant in school by other learners. The result had been that many San learners who leave the village schools to go to the regular schools find it difficult to adapt and usually drop out after a few months, with very few completing upper primary school.
- 31.10 Parents had been urged to encourage their children to go back to school but most of the children preferred staying at home with their parents, accompanying them into the bush to gather fruits. The Committee members indicated that parents had brought this to the attention of the authorities but no action seemed to have been taken.
- 31.11 Some Tsumkwere residents spoke to were of the opinion that Tsumkwe was a kind of 'Siberia', where recalcitrant civil servants and those who had committed offences elsewhere were sent as some form of punishment. Once in Tsumkwe, the government forgets about them

and turns a blind eye to what they do and a deaf ear to the complaints of the residents.

- 31.12 On political representation, the Committee indicated that the San in the district were sufficiently represented from local government level to national level. All the chiefs in the district were San and they were even ruling other residents who were non-San. The majority of the Councillors were San and there was a San Member of Parliament from the area.
- 31.13 On employment, the Committee noted that, due to the high drop-out rate of San learners, they were always marginalized when it came to employment. The Committee noted that the government had indicated that the San would be given priority in terms of recruitment in the area but that this did not seem to be the case as, in practice, some of the people employed were even less qualified than the San.
- 31.14 The Committee noted that the Conservancy was not yet self-sufficient and, as such, needed help from the government. The members noted that there were often droughts and that the government used to provide drought and food relief. They added that in 2005 the harvest was not encouraging and they had needed food relief. The government provided food relief in June 2005 – 50 kg of rice and 4 liters of oil was given to about 20 people to share. They said the regularity of the food relief was a cause for concern as it was supplied at times at 5 – 6 month intervals. They noted that, in some instances, some of the bags of maize were infested with insects.
- 31.15 The Committee members, however, noted that the government was not entirely to blame adding that the problem was at district level. They stated that some district officials were hindering the progress of the San communities in the area and they were doing so in cohort with some San members. They said the officials were encouraging discrimination and favouritism among the San.

32. Meeting with Residents of Routs Pos Village

- 32.1 After discussing with the staff and committee members of the Nyae Nyae Conservancy, the delegation visited one of the villages benefiting from the activities of the conservancy – Routs Pos Village. Routs Pos Village is situated about 10 km from Tsumkwe and is a small village of about 20 huts.
- 32.2 The delegation had a meeting with some of the residents, amongst them a member of the Management Committee of the Conservancy. The delegation explained to the residents the purpose of the mission and indicated that it had already held meetings with other San communities in other parts of the country to assess the extent to which their human rights were being protected by the government, and was visiting them to find out about their living conditions, the benefits they were deriving from the Conservancy and their expectations from both the government and the Conservancy.
- 32.3 The residents spoke on almost the same issues raised by the Management Committee and other residents of Tsumkwe the delegation had spoken to earlier. Their concerns ranged from hunger, poverty, lack of employment and poor education for their children.
- 32.4 They said the government had been assisting them but the assistance was irregular and at times came very late after too much suffering. They urged the government to provide the village with a clinic and establish commercial activities around the area to create employment for the people. On education, they called on government to ensure proper discipline in the schools and provide assistance and protection for San children.
- 32.5 After the meeting, the delegation visited a garden that was being developed by the Member of the Management Committee. The garden had among other things, papaya, cabbage, potatoes, guava, onion, spinach, carrot, pepper, orange and lemon. Water for the approximately 30 m² garden was supplied from a water tank provided by the government.

33. Meeting with the staff and management of Nṽa Jaqna Conservancy

- 33.1 Nṽa Jaqna Conservancy, which covers an area of about 9,120 km², is the largest conservancy in the country. Registered on 24 July 2003, the Conservancy supports more than 5,000 persons, including those who have rights as conservancy members.
- 33.2 It is located in Tsumkwe District West of Otjozondjupa region of north-eastern Namibia. It borders the Nyae Nyae Conservancy to the east, the Okavango region to the north, the Otjinene region to the south and the Veterinary Red Line to the west.
- 33.3 The Conservancy area is located in a woodland biome and is home to a variety of interesting and important wildlife species. In addition to substantial stands of timber, small shrubs and drought resistant grasses dot the landscape. The area played host to a number of South African Defence Force (SADF) bases during Namibia's liberation war and water and other infrastructure remains. This is being utilized by the Conservancy membership.
- 33.4 The Conservancy leadership comprises 38 representatives from each of the 21 villages in the Conservancy who form the Village Conservancy Committees. The Conservancy is divided into four districts (Aasvoleness, Mangeti, Omatoako and Kanovlei) and the members of the Village Committees serve on the District Committees in their areas. Each of the four District Committees has elected from its ranks a Chairperson who is responsible for running the district meetings and a secretary who records the minutes of the meetings and handles all correspondence.
- 33.5 All the members of the various District Committees form the Conservancy Committee together with three representatives of the !Kung Traditional Authority. The Conservancy Committee acts as a Steering Committee for the Management Committee, made up of the Chairperson, Vice Chairperson, the Conservancy Secretary and the Conservancy Treasurer. In terms of the Conservancy Constitution,

the Conservancy Committee is empowered to make certain management decisions and the Management Committee is responsible for the day-to-day operations of the Conservancy.

- 33.6 On 2 August 2005, the delegation met with staff and members of the Management Committee of the Nǀa Jaqna Conservancy at the Conservancy Offices in Mangeti about 300 km from Windhoek. The meeting was attended by 3 Senior Councillors, 1 Junior Councillor and 4 !Kung Traditional Leaders.
- 33.7 The members explained the establishment of the conservancy and indicated that, since independence, the government had taken initiatives to improve the lives of San communities, especially in Tsumkwe district.
- 33.8 They informed the delegation that, of the 5,000 inhabitants in the Conservancy, at least 2,000 were San of the !Kung tribe, who constituted the main beneficiaries. They noted that, because the other groups such as the Ovambo kept large herds of cattle that grazed a lot, there had been some sporadic incidences of conflicts between the San and the cattle rearers.
- 33.9 In terms of facilities, they indicated that they had a clinic and a hospital (even though most of the staff, including the nurses, were non-San), a primary school and a police post. They added that, in spite of the fact that the majority of the staff in these institutions were non-San, there had been no problem of discrimination or prejudice or stereotyping perpetrated against the San, noting that in the hospital for example, when a patient goes there without money, they are treated free of charge.
- 33.10 On education, they said that education was free for the San from grade 1 to 10. They were exempted from tuition and other fees. They said a number of San learners from the Conservancy had completed grade 12 but none had been to the university and very few to other tertiary institutions. The proportion of San learners completing grade 12 was relatively low compared to learners from other ethnic groups in the district.

-
- 33.11 They believed this could be attributed to a number of reasons, including the fact that San people were generally very poor and could not afford to pay school fees for their children. Those who managed to pass the grade 10 examinations into grade 11 were usually helped by WIMSA and other institutions. Those who could not receive assistance were forced to stay at home.
- 33.12 Other problems include the nomadic nature of their parents. Usually when the parents move, the children go along with them, even during the school season. Also the fact that most parents do not appreciate the importance of education and make very little effort to encourage their children to go to school. They called on San parents to encourage their children to go to school.
- 33.13 On mother tongue education, they said the !Kung language was still not used as a medium of instruction but that there were measures being taken with the assistance of WIMSA to develop the language and train teachers to start teaching the language to pupils at junior primary level. On culture, they said their culture was still being recognized and they were allowed to practice their cultural activities anywhere in the country.
- 33.14 On political representation, they indicated that the San in the district were represented at all levels of government, noting that the Chief and all the six Senior Councillors and Junior Councillors were San. They also noted that the only San MP was from the district.
- 33.15 On employment, they noted that because of the low literacy level of most San members, it was difficult for them to get employment. They indicated however that the government had made it possible for those who drop out of school after passing the grade 10 examinations to apply to join the police force or the Namibia Defence Force. They informed the delegation that about 25 San members had been recruited into both forces adding that there were also some recruited into the Prison Service. Those with lesser qualifications had been recruited in various places as cleaners, watchmen and in other menial jobs.

- 33.16 They said that, due to lack of employment opportunities, many of the people in the area were poor. This, coupled with the poor rain fall had made them incapable of sustaining life, forcing them to rely on drought relief which is supplied by the government on a quarterly basis. They said even though they had not had training in agricultural activities, they knew how to cultivate and were cultivating at subsistence rate to supplement the food aid from the government.
- 33.17 The members also indicated that they were facing many challenges in the Conservancy, principal among them being the increasing number of livestock. They indicated that the San community was beginning to get very concerned about this trend as they consider it a threat to their livelihood. They said the Conservancy was established to promote and protect wildlife and the keeping of livestock was incompatible with the activities of the Conservancy. They claimed livestock was destroying the veldfood on which the San depend for survival. They said they had brought the concern to the attention of the government and were hopeful the government would take steps to address the situation.
- 33.18 Another related problem was the conflict between the San and non-San. They claimed the other tribes – non-San who moved to the district after independence - wanted to start large-scale farming but that the San were against the idea as that would interrupt wild life activities and bring conflict between the farmers and wildlife.

34. Meeting with Residents of Mkata Village

- 34.1 After meeting with the staff and Committee members of the Nǀa Jaqna Conservancy, the delegation was accompanied by some of the Committee members to Mkata Village, some 20 km from Mangeti.
- 34.2 The village, which was inhabited by about 98 families, had a population of about 270 people. It had a pre-school and a primary school that went up to grade 6. The pupils in both schools were taught in English and Afrikaans and there was not a single San teacher

amongst the instructors. They said the non-use of their language as a medium of instruction was affecting the development of their language as many young people were beginning to forget how to speak it.

- 34.3 The residents noted that all children of school age in the village attended school and they had not registered any drop-outs before grade 6. Children only started running away from school when they went for grade 7 in Mangeti or to lower secondary school (grade 8-10) in Tsumkwe. They said no person from their community had ever gone up to grade 12 even though most of them had succeeded in passing the grade 10 examination. They attributed this to poverty and the fees they were required to pay in grades 11 and 12. They said that after grade 10 they were abandoned by the government and their parents, who were generally poor, could not afford to sponsor them.
- 34.4 Those who failed grade 10 were required to pay fees if they wanted to repeat. As most of them could not afford the fees, they usually decided to leave school. They said they wanted those learners who failed the grade 10 examinations to either be given another chance to repeat, or to be trained in other activities so that they could go back to their communities and teach the others.
- 34.5 The residents claimed that they had not had rainfall in 2005, and as such people did not cultivate and thus they had no food. However, government had not given them any drought relief or food aid.
- 34.6 They said the people who were supposed to assist them to plough refused to plough for them because they had a conflict with the San community. The "ploughers", who were members from another community, insisted that the San provide them with land for their own cultivation before they would assist them. They said they had reported the matter to the Councillor but no action had been taken.
- 34.7 They said the government had trained about 5 San members in the community on how to plough. Only those who had been trained were given ploughs and the rest had to rely on the members of the other ethnic groups assigned to train and assist them.

- 34.8 They also complained that they did not have enough water. They said there were two boreholes in the village which were constructed for the schools. The village borehole had since been destroyed and they also needed a water point for their livestock and to water their vegetable gardens.
- 34.9 The village had no clinic and they had to travel to Mangeti for any health problems. They said it was difficult to get jobs due to their low literacy level.
- 34.10 The older residents complained about the non-payment of their pension allowances due to the fact that they had no identification documents. Most of the old people in the village had no identification papers. Most of them were not registered. The Regional Councillor in Tsumkwe had requested the Ministry of Home Affairs to go and register them. However, the officials of Home Affairs require the old people to travel to Mangeti about 20 km from the village for the registration, an exercise which most of them cannot do. The excuse of the Ministry not to go to the village is that there is no electricity in the village and the details for registration have to be computerized. They then requested residents to travel to Mangeti where there is electricity for them to use.
- 34.11 They said they had reported this difficulty to the Councillor but no action had been taken. They said the government could provide them with transport to Mangeti for the exercise or go to the village and get their details, which could be entered into the computer later.

35. Meeting with WIMSA Gobabis Branch

- 35.1 The delegation met with the WIMSA Gobabis Branch in Omaheke region on 3 August 2005. The meeting was attended by two WIMSA officials – Jereon Kwant (a VSO volunteer) and Maria Goagoses.
- 35.2 After introducing the delegation, Commissioner Chigovera explained the purpose of the Mission and informed the members of WIMSA that the delegation had been talking to other stakeholders in the

country about the protection of the human rights of the San communities in Namibia. He said the delegation had already spoken to Windhoek-based NGOs, including WIMSA, about the situation of indigenous populations in the country but would however be happy to get more information, if available, from WIMSA Omaheke as the latter was working on the ground with the communities.

- 35.3 After the briefing by Commissioner Chigovera, the delegation was informed that the San in the region spoke four different languages, namely, the !Xóõ, Naro, Nǀaa and Ju|'hoansi. They said the !Xóõ and Naro speaking people were related and could understand each other's language although they differed linguistically. However, they all had similar cultures, such as dances and lifestyle.
- 35.4 The delegation was informed that most San in the region did not have any right to the land they were living on and even though the region had the majority of San communities in the country, the San formed a minority in the region. They added that because of a long history of marginalization, discrimination, poverty and present day stereotypes of San as lazy, thieves and incompetent, they were exploited through all possible means. They claimed that San children were usually sexually abused by their employers. Cases of rape had been reported to the police in the region but nothing had been done.
- 35.5 On employment, most of them were employed for little or no pay. At times they were given only food with no monetary remuneration. They said other communities regarded their actions towards the San as philanthropic, claiming that the San did not need to be paid. They said other communities in the region had always convinced the San to hand over their kids to them so that they could educate them and provide them with jobs. However, these children were usually exploited, used and in some cases the girls returned to their parents pregnant. The delegation was informed that in 2003 a San child was raped on a farm. The matter was reported to the police but two years on, nothing had been done. They also claimed in 1996 that a San pupil was raped in a school and when the matter was reported to

the principal, the latter said it was normal for a San to be used in that way. The matter was reported to the regional government but no action had been taken. They added that there were many incidences of rape of San children in schools, on the farms and in the homes of employers but most of them were scared to report them or just believed that, even if they did, nothing would happen.

- 35.6 They said the government's resettlement programme was not succeeding as the areas allocated to the San had been invaded by other communities with their livestock. Since most San members do not keep livestock, most of the land allocated to them remains bare and other ethnic communities that keep large herds of livestock usually graze in these fields and at times undertake other economic activities. They quoted the example of Skoonheid Farm where they indicated that, because the San do not keep cattle, other groups such as the Herero had been grazing their cattle on San territory at Skoonheid. The San in Skoonheid were surrounded by Herero who keep large herds of cattle.
- 35.7 Skoonheid was bought by the government in 1992 mainly to resettle a large number of San people evicted from farms where they and their ancestors had worked for generations. The government has also used the farm to accommodate other communal farmers during the drought.
- 35.8 The residents claimed they had reported this to government but very little action had been taken. They claimed that concrete action had not been taken because the San in the region did not have a leader. The government had refused to recognize their traditional leadership. They therefore find it difficult to have their grievances channelled to the appropriate authorities and followed through.
- 35.9 On education, they claimed that education was free up to grade 10 for San children. However, they complained that the principals in the schools did not want to take in many students not paying fees, as this would reduce their yearly budget. They said the principals thus tended to discourage the San learners from registering. They

added that, since the region had a large concentration of San, many had had to be left out of school. They said the problem had been exacerbated by the fact that most of the children and the parents did not know they were exempted from fees.

- 35.10 It is worth noting at this juncture that, during a meeting with residents of Skoonheid Farm, they claimed that most of their children could not go to school because they were required to pay fees which they did not have. The delegation told them that it had been informed by government, and this had been confirmed in the other regions, that San children were exempted from fees for grades 1 – 10. They said that in Mokgenedi Tlabanello High School (from grade 8 – 12) they were required to pay fees.
- 35.11 The delegation met the Acting Principal of the School, Mrs. Bohitile Monica, who indicated that she had never seen the government policy on fees exemption. However, she had used her initiative to write to the regional director requesting that there should be fee exemptions for all learners, especially San learners who could not pay fees. She said that was what she had been implementing. They said that mother tongue education was provided in only one school in the region, that is, Gaina Primary School and this was provided only in grade 1.

36. Meeting with Residents of Skoonheid Farm

- 36.1 Skoonheid Farm in East Omaheke region is one of the government resettlement projects that was aimed at providing land to the landless in the country. It was established in 1993 but actually built in 1995 to, among other things, improve food production and ensure food self-sufficiency for the San so as to encourage self-reliance, increase the means of the communities through income-generating activities such as tailoring, carpentry and to integrate the San into the mainstream economy. The project, established on 9,366 hectares of land, is to benefit 70 San families previously scattered in small settlements around the area.

- 36.2 The project, which is managed by a Project Coordinator appointed by the Ministry of Lands, produces food crops such as vegetables and also trains the San community in cattle rearing.
- 36.3 The delegation visited and held discussions with the residents of Skoonheid Farm on 4 August 2005. The delegation was introduced to the residents by the Project Coordinator. The head of the delegation, Commissioner Andrew Chigovera, briefed the residents about the African Union, the establishment of the African Commission including its mandate, the establishment of the Working Group and its mandate and the purpose of the mission to the Republic of Namibia.
- 36.4 The delegation was informed that the project was not exclusively for the San community in the area. There were other ethnic groups such as the Damara and the Herero; however the total San population was about 300. The people were originally working on commercial farms owned by the Boers and stayed in little homesteads in the reserves. They were then relocated to the area and houses built for them.
- 36.5 The bricked houses of about 5 m² were built on an area of about 12 m² per household. The houses had no toilets, no water and no electricity. Ironically, electric cables from different projects/farms around the area pass through the village.
- 36.6 The residents indicated that they were suffering in the settlement, that when they were relocated, the government promised that the land would be exclusively for the San, but they later on realized that that was not the case. They indicated that 12 households were provided with 10 goats each on the understanding that the calves would be given to families that did not have any. Due to drought and inadequate support from the government, most of the goats died.
- 36.7 They said that the water supply in the area was inadequate, that the generator they had was damaged and the government had been promising a new generator that had never been delivered. They also said that they were given a vehicle by USAID in 2004, but the vehicle had never been handed to them by the government, adding that

the government claimed the vehicle must be driven by a government driver. They said that even though the vehicle was given to them through government, the vehicle was not for the government but for the project. The Project Coordinator informed the delegation that according to the government, they were still trying to change the number plate of the vehicle to a Government of the Republic of Namibia (GRN) number plate so that maintenance of the vehicle could be done in government garages.

- 36.8 On education, the parents indicated that they had no jobs in the area to pay for school fees for their children and their pension was only N\$ 300, which they claimed was not enough to pay fees and feed the family. They said they wanted their children to go to school but, given their poor situation, they could not afford it.
- 36.9 The residents claimed that education for San children in the area was not free like in other regions of the country, adding that those who could not pay fees were driven away from school. They said the school was about 20 km away from the settlement and the clinic 10 km away.
- 36.10 A pre-school teacher informed the delegation that children in the kindergarten were not provided with food and due to hunger most of them stopped going to school. She was employed by the Ministry of Gender, Equality, Women and Social Welfare, but had not been paid since April 2004. She said the Ministry informed her that there was an agreement with the community that the latter would be paying her, but added that she did not see the community raising the money to pay her, as there was no income-generating activity that would enable the residents to raise such money.
- 36.11 On representation, they said that they were not represented at any level of government, that the government had refused to recognize their chief and gave no reason for the refusal. They added that the San MP did not represent the entire San community in the area, that ever since he was elected he had never visited them and did not know the problems they were facing.

36.12 The residents also complained about the management of the project. They said the women were the ones who cultivated the fields but when the harvest was sold, they never saw the money, that the money was taken to the Headman and they did not know what happened to it. They said they would like the management of the project to be accountable to them and for them to have an input into how the money was used.

37. Meeting with the Honourable MP Royal /Ui/o/oo

37.1 The delegation met with the Honourable Royal /Ui /o/oo, the only San MP in the country at the moment. Commissioner Chigovera briefed the MP about the African Commission and the establishment of the Working Group. He also briefed the MP on the purpose of the mission and the activities the delegation had been engaged in since the mission started on 26 July 2005.

37.2 Commissioner Chigovera said the delegation would like to learn more from the MP about the human rights situation of indigenous peoples in general and the San in particular. He said the delegation was interested to know about the assistance they received from government, their representation at all levels of government, access to education, the right to land, the legal and other measures put in place to protect the human rights of the San, and any other information the MP might want the delegation to know about the situation of the San.

37.3 The Honourable Royal /Ui /o/oo, MP thanked the delegation for having decided to meet with him to discuss the situation of the San. He started by giving a brief background of himself. He indicated that he was born in Tsumkwe (for which he said the real spelling was Tjum!kwi). He joined SWAPO in 1980 and spent most of his childhood years in Botswana during the liberation struggle. He said he studied up to grade 10 but, due to lack of financial support, could not further his education. While in Botswana, he worked for several NGOs including CIDA and the Basarwa Craft.

-
- 37.4 He returned to Namibia in 1988 and worked with the Nyae Nyae Development Foundation as a teacher while at the same time studying linguistics. From 1991 – 1994 he taught grades 8-10 at the Tsumkwe Secondary School. In 1997, he was recruited by the Nyae Nyae Development Foundation as a teacher trainee and while working as a teacher, in 1995, he was elected by the Tsumkwe Community to be one of the traditional authorities in the area. He said that at this time, San traditional leadership was not recognized by the government. During the same period, he was also elected as SWAPO Coordinator for Tsumkwe.
- 37.5 In 1999, he was on the SWAPO list for the legislative elections and SWAPO nominated him as MP after winning the elections. In 2004 he was re-nominated. He was serving his second term as the first San MP in the SADC region. He said that, apart from him, there was a regional councillor and a member of the traditional leader's council, both San members from Tsumkwe.
- 37.6 He said that, as a San MP, he had been trying to get recognition for San traditional leadership in other regions including the Khwe in the Caprivi region and the Ju|'hoansi in the Omaheke region. He said that for their leadership to be recognized, the government required that they elect a chief, six senior councillors, six junior councillors and a secretary.
- 37.7 Commissioner Chigovera informed the MP about the problems the Khwe were facing, especially the recognition of their traditional leadership and the fact that San communities in other regions were complaining that they hardly saw him.
- 37.8 Regarding the Khwe situation, he said the reason the Khwe Chief had not been recognized was because they had not agreed who should fill the above positions. He said that when the former Chief, Kipi George, died the Khwe had a problem electing another chief. The person who ruled after Kipi George was rejected as a chief by the people because he did not come from a royal family. He said the Khwe community only needed to put its act together and ap

proach government for recognition. He said he did not want to go there lest they accuse him of interfering in their process. He concluded by saying that it was unfair for the government to have put the Khwe under the leadership of the Mbukushu as they had nothing in common.

37.9 On education, he said the government had established schools for the educationally marginalized, such as village schools to encourage children from marginalized communities to go to school. He said that many such schools had been established in Tsumkwe. In most of these schools, mother tongue education is taught from grade 1 – 4. He said education was free up to grade 10. He said he had been assisting many San learners who pass grade 10 examinations and could not afford to continue. However, he said the government should be able to support them up to grade 12.

37.10 Commissioner Chigovera informed the MP that the San communities needed confidence and high self-esteem, which could be built by those San or other indigenous members who had excelled, like the MP himself. The Honourable Royal /Ui /o/oo noted that the San people themselves were responsible for their low self-esteem, that they did not want to be identified in public as San and rarely spoke their local languages in public for fear of being laughed at or identified. He said the stereotyping from the public and the low esteem of the San had influenced the latter's behaviour and shielded them from public life.

37.11 He said he and the Deputy Minister of Gender, Equality, Women and Social Welfare (an indigenous person from the Himba community) had always been attacked in Parliament by their colleagues, but since they knew they were in the minority, they had continued to work hard to ensure the protection of the rights of their peoples.

37.12 He concluded that he had been trying to mobilize other San members to join party politics, especially his party, SWAPO, but they did not seem to be interested. He said that, as the only San MP, he did not think he had enough impact and would have wanted at

least four San MPs at the National Assembly and four at the National Council, although he did not think the government was doing badly.

PART V

38. The Delegation's Findings and Observations

- 38.1 The Mission of the WGIP was undertaken for 11 days, during which the delegation travelled long distances to meet and discuss with indigenous communities, who in most cases live in the remote parts of the country. The delegation visited indigenous communities in four regions of the country and held discussions with a cross-section of institutions and organizations dealing with indigenous issues, notably, relevant government ministries and NGOs. The delegation also had the opportunity to meet with the Honourable Royal /Ui/o/oo, MP, the only MP from an indigenous community in the country at the moment.
- 38.2 Due to lack of time, the delegation could not travel to Kunene region to meet the Himba indigenous group nor could it visit more San communities, as it would have wanted.
- 38.3 However, the delegation raised the situation of all indigenous peoples with government officials and other stakeholders and believes that the persons met and the discussions held with the different institutions provided it with sufficient information to enable it to have a better understanding of the situation of indigenous issues in the country.
- 38.4 Although the African Commission recognizes the Himba as an indigenous community in Namibia, and although they have been included as beneficiaries in similar programmes to the San to uplift the living conditions of indigenous communities, it was the observation of the delegation that there was no government policy that recognised the Himba as indigenous. Some officials argued that the Himba are a subgroup of the Herero and hence from the Bantu ethnic group, and no Bantu group could claim indigeneity in any African country.

-
- 38.5 Though not recognized as an indigenous group, but because of their strong adherence to their culture and their resistance to having modernity interfere with that culture - a characteristic similar to other indigenous populations - the government has tended to treat the Himba community like the San indigenous group. However, the Himba are not considered by the government of Namibia as an indigenous population, but are rather treated like any other marginalised community in the country.
- 38.6 The positive phenomenon is that while they are all categorized as marginalized communities, the government has programmes specifically tailored to address the specific needs of individual groups. For example, for the Himba, the government has provided veterinary stations to assist them with the herds; for the San, the government is providing them with agricultural training such as crop farming and cattle rearing.
- 38.7 As the delegation did not visit the Himba community, this report documents only the findings and observations of the delegation with regard to the San indigenous group.
- 38.8 This section of the report analyses the findings and observations of the delegation. It discusses the human rights situation of the San communities in terms of land and resource rights, health, education, hunger, poverty, employment, traditional leadership and political representation, and other government policies.

39. Recognition

- 39.1 There is no specific recognition of indigenous peoples' rights in the Namibian Constitution and Namibia has not signed any of the international conventions that recognize indigenous peoples' rights.

40. Land and Resource Rights of the San

- 40.1 In its White Paper released in October 2001, the Ministry of Lands, Resettlement and Rehabilitation indicated that, against the background of the past unequal distribution of land, it was the govern-

ment's aim to redress this imbalance and facilitate access to available land to the majority of the Namibian people, within the framework of social justice. In particular, this policy is aimed at specific target groups which have been forced into destitution and landlessness by the successive colonial regimes. Among these are displaced citizens, members of the San community, former fighters, Namibians from exile, people with disabilities and people from overcrowded communal areas.

- 40.2 The Ministry added that the primary objective of the government's Resettlement Policy would focus on the resettlement of eligible persons in ways which are institutionally, sociologically, economically and environmentally sustainable and which would allow the beneficiaries to become self-supporting.
- 40.3 According to the Ministry, resettlement does not only mean providing people with land, housing, infrastructure, knowledge and skills to maintain and develop their new environment and entitlements, but it means establishing an innovative attitude in which the spirit of self-reliance is the underlying principle on which development is to be built by the government or the people themselves.
- 40.4 The San people, the country's earliest known inhabitants, have historically been exploited by other ethnic groups. The government has taken a number of measures to end this societal discrimination against the San, including seeking their advice about proposed legislation on communally held lands and increasing their access to primary education. By law, all indigenous groups are able to participate equally in decisions affecting their lands, cultures, traditions and allocations of natural resources.
- 40.5 Measures thus far taken by the Namibian Government to facilitate land redistribution and reform include the establishment of the Ministry of Lands, Resettlement and Rehabilitation, the enactment of the Agricultural (Commercial) Land Reform Act of 1995, the National Resettlement Policy of 1997 and the National Land Policy of 1998 and the recent Communal Land Reform Act (Act No. 5) of 2002.

The purpose of the latter piece of legislation is “to provide for the allocation of land rights in communal areas, establish communal land boards and describe the powers of chiefs and traditional authorities and boards with regard to communal land”. The Communal Land Reform Act seeks to regulate the land tenure relationship between the State and those occupying communal land owned by the State. It recognizes the existence of communal area conservancies and, by extension, the role they play in conservation. The Act makes provision for the conversion of traditional rights to leasehold rights for periods of up to 99 years.

- 40.6 The Communal Land Reform Act is therefore the principal mechanism for allocating land rights and managing land use decisions, and contains the principles of decentralized decision-making, representation and consultation.
- 40.7 Nevertheless, the San and other indigenous Namibians have been unable to exercise these rights fully as a result of historically minimal access to education and economic opportunities under colonial rule, coupled with their relative isolation in remote areas of the country. The hopes of the families residing at resettlement projects for land tenure have not yet been satisfied. The estimated 7,000 San supported by resettlement projects are constantly reporting on their dependency, frustration and lack of trust in the projects.
- 40.8 Though land is being acquired for resettlement under the Land Reform Act, the primary objectives of the national resettlement policy have thus far been achieved only in part, and in some cases not at all. Recent research has revealed that since the inception of the resettlement programme, the objective of attaining self-sufficiency by means of “creating employment through full-time farming and bringing smallholder farmers into the mainstream of the Namibian economy by producing for the market” has not been accomplished. The San in all the areas visited, except Tsumkwe, reported a lack of access to the wildlife and forest fruits they were used to. They also complained about their inability to do large-scale commercial farming due not only to lack of resources but also due to lack of training.

Most of them depend almost entirely on government food aid, which is very irregular.

- 40.9 The process of applying for resettlement also often bypasses the San, one reason being that most San in Namibia live in remote areas and are not made aware of resettlement projects planned in their areas until it is too late to apply, another reason being that many are illiterate and unable to submit a written application.
- 40.10 Regarding land tenure, of the six broader Namibian San communities, only two, the !Kung and Ju|'hoansi of Tsumkwe district, today control their ancestral land (now state-owned communal land) and thus have access to natural resources. The Hai|!om in north-western Namibia still live on their ancestral land, but lost control over it when it was absorbed into the Etosha National Park and commercial farms in the Outjo and Tsumeb districts. The ancestral lands of the !Xóǀ and Ju|'hoansi in the Omaheke region in south-eastern Namibia and the Khwe in West Caprivi in the far north-east have all been turned into communal or commercial farms that employ some San as farm labourers, paying them either a meager wage or in kind. Minimum wages for farm workers have been established by the Namibian government. The government has also stipulated other amenities that farm workers have to be provided with, however, these were not being observed. Farmers continue to ignore the law and pay the San less than the minimum wage and at times in kind. Due to their ignorance, poor living conditions and high levels of unemployment among the San communities, they continue to work under such exploitative conditions.
- 40.11 The Namibian government and the Communal Land Boards have been unwilling to recognize and grant land rights to groups who make claims on the basis of customary rights and traditional livelihoods. The efforts to lay claim to ancestral territories in at least four San communities have been rejected by the Namibian government.
- 40.12 Challenges continue to face the San with respect to land and resource rights in Namibia. There have been thousands of people dis-

possessed, commercial farmers have reduced the numbers of San workers and chase them and their families from the farms. It is estimated, for example, that several thousand people lost their residence rights in the Gobabis Farms in eastern Namibia. Large numbers of dispossessed San are found today in places such as Gobabis and in Western Caprivi attempting to eke out an existence doing odd jobs and seeking help from their neighbours while waiting for government food aid.

- 40.13 Apart from dispossession, the San are very concerned about the activities of other ethnic groups on what they consider their ancestral land. The San are concerned by the massive influx of commercial farmers, in most cases cattle farmers, into territories on which the San depend for their meager livelihood. The pattern of other groups' livestock using San water sources, leaving insufficient amounts for game which consequently leave the area, destroying and diminishing the bushfoods on which San depend, and thereby creating total dependency on the intruders themselves, is all too well known to the San, who find themselves at a loss to prevent it recurring.
- 40.14 This pattern in itself leads to further land dispossession for San communities; it is a vicious cycle of San claiming land anew to begin anew and being dispossessed of it by some stronger force. The Ju|'hoansi on Skoonheid Farm in Omaheke region and the !Kung community in Nǃa Jaqna Conservancy in Tsumkwe district complained about the encroachment of neighbouring stronger ethnic groups onto their territory with large herds of cattle which might overgraze the land. The presence of increasing numbers of cattle is accompanied by a vibrant trade in livestock in the district. This newly emerging livestock economy is seriously threatening the livelihood of the San residents because of the damage to a fragile ecology and its bushfood resources.
- 40.15 Through land dispossession San communities have lost their food security; they have become economically dependent on other ethnic groups and government food aid; they have experienced a loss of

dignity, disruption of their social fabric, and degradation of their environment by intruders with large cattle herds; and, in sum, they remain a marginalized population. In West Caprivi, for example, the government in 2003 turned the West Caprivi Game Reserve into a national park - the Bwabwata National Park. This placed stringent restrictions on where people can live in the national park and on the kind of activities that they can pursue there. For example, the people are not allowed to keep cattle in some parts of the new National Park, such as in Masambo and Omega III Villages, and there are limits placed on agricultural activities. The Khwe in West Caprivi are not permitted to hunt for animals within the National Park, are restricted on the quantity of veld fruits (such as devil claw) they can harvest, and food aid from government is very irregular. Where they do grow food, it is most often destroyed by elephants and other wild animals in the park. They receive no compensation from the government for the loss.

- 40.16 In 2001, it was estimated by the government of Namibia's Emergency Management Unit (EMU) that between 17,000 and 22,000 San were dependent on food aid. In Tsumkwe district, in particular, the Nyae Nyae Conservancy, populated primarily by Ju |'hoan San, there was hunger in 2002. In 2003, the government supplied mealie meal (maize meal) to some San communities to offset nutritional problems. The Ju |'hoansi in Nyae Nyae have also dealt with the impacts of wild animals, notably elephants, on their water points and gardens. The large numbers of elephants in Tsumkwe district reportedly are wreaking havoc on water pumps, gardens and fences around people's homes.
- 40.17 The San feel that they are marginalized minorities who have less access to land rights and resources than other groups in Namibia. They are concerned about the trend, even in community-based natural resource management in Namibia, which they see as having potential benefits but which increasingly to them appears to be overseen by other groups or individuals who reap the majority of the rewards. If current trends continue, some San believe they will face further problems in terms of lack of access to natural resources and development programmes.

- 40.18 There are some potential bright spots, however. An innovation in Namibian development is the concept of the conservancy.⁶ A conservancy is an area of communal land where communities have some control over natural resource management and utilization. They do this through a statutory body that is recognized officially by the government of Namibia, a conservancy committee. While there have been over a dozen conservancies established on communal land in northern Namibia, some of which are in the hands of San communities, there are threats to the long-term viability of these conservancies because of population growth, in-migration of other groups, and possible changes in land tenure.
- 40.19 For the San, land means survival, development and economic gain. Wherever possible, to this day, the San gather bushfoods to ensure a balanced diet. They would like to retain game as a complementary food source, but today only two San communities in the entire country are officially permitted to hunt traditionally, namely the members of the Nyae Nyae Conservancy and the Nǀta Jaqna Conservancy in north-eastern Namibia.

41. Stereotyping and Discrimination

- 41.1 The term San is used to refer to a diverse group of indigenous peoples living in southern Africa who share historical and linguistic connections. The term "Bushmen" is no longer used officially in Namibia. Unfortunately, the San have historically been regarded as second-class citizens in Namibia by both the Europeans and Bantu-speaking peoples. They have historically been exploited by other ethnic groups. Members of the San community have endured exploitation and discrimination at the hands of their fellow citizens throughout history. This includes exploitation by colonial forces, who used them as trackers and later left them helpless in former military camps. At present the San people are at the mercy of farmers in both the communal and commercial areas in Omaheke and Caprivi regions as well as other employers across the country, where they are marginalized and subjected to unfair labour practices and inadequate shelter.

- 41.2 The government has taken measures to end societal discrimination against the San, including seeking their advice about proposed legislation on communally held lands and increasing their access to education. However, many San children do not attend school and most of those who attend never proceed beyond grade 10.
- 41.3 Other ethnic groups regard the San as useless, lazy and primitive. The stereotypical attitude of their neighbours has instilled in the San a sense of despair and low self-esteem. Many of them hide their identity while in public. This attitude was confirmed by the Honourable Royal /Ui/o/oo, and his concern is that this is seriously undermining San culture as many youths no longer associate with San culture.

42. Poverty and Unemployment

- 42.1 The San are undeniably the worst-off ethnic group in Namibia and their level of poverty is unmatched by that of any other ethnic group in the country. Their Human Development Index is less than half the national average, while their Human Poverty Index is more than double the national average. Per capita income of the San is the lowest among all language groups in Namibia, and the majority of the San population lacks access to the means of earning a cash income.
- 42.2 Although some inhabitants were given jobs and housing inside Etosha when the Etosha National Park was established, the majority of the Hai |om San are resident on farms and towns in Outjo and Tsumeb districts. There are also San living in other communal areas and among other ethnic groups, and some are present as small minorities in at least seven other conservancies. In Omaheke, Otjozondjupa and Kavango regions, most San are unpaid labourers for local Herero and Kavango farmers. They may be given some maize meal and milk for carrying out various types of work. This labour practice is illegal under Namibian law, but it continues to be perpetrated against the San while government officials turn a blind eye.

6) The Namibian Government defines a conservancy as follows (Ministry of Environment and Tourism, undated: 1): A 'conservancy' is a geographically defined place, and the wildlife and people in that place. The people jointly manage, use and benefit from the wildlife in the conservancy. The main objective is to promote sustainable use of the animals through co-operation and improved management by members through a committee. The need and desire for forming conservancies has to come from the communities themselves.

-
- 42.3 The majority of the San are said to have no work prospects and no access to education and basic services and, on the whole, their communities are starving, with mortality rates among them ever-increasing due to hunger and untreated illnesses such as TB, typhoid fever and malaria.
- 42.4 Food security is a major problem – with up to 70% of Namibian San dependent on food-aid programmes. Other problems facing the population include landlessness, lack of education, extreme poverty and dependency, as well as vulnerability to poverty-related diseases.
- 42.5 While all this is undeniable, it should also be noted that a small number of San in Namibia are now self-employed, producing crafts and running community-based campsites, and a few are employed by development organisations and the government, especially in the police, army and prison services, earning fair wages.

43. Culture and Modernisation

- 43.1 The San ethnic group can be divided into 6 sub-groups, Ju|'hoansi, !Kung, !Xóǎ, Khwe or Barakwengo, Hai|om and Naro. Some of these groups have little or no relations with one another, but this is changing as San interests begin to form into units of solidarity.
- 43.2 The San live in isolated groups and traditionally used to be hunter-gatherers who migrated in small family bands. The San did not keep domestic livestock and they moved with everything they possessed to follow the availability of water, game and edible plants. Ownership of possessions or livestock was not typical in San society. Traditionally, women tended to look after the children as well as collecting plants and the men were involved in hunting.
- 43.3 Today, however, San communities in Namibia are settled permanently in villages where they are diversifying their sources of livelihood like other communities. Some San members are engaged in livestock and crop farming although at a very small scale; some are employed to earn income, selling crafts, benefiting from the so-

cial welfare grants provided by the government, participating in national programmes and having access to social services such as education, water, health, transport and communication, etc.

43.4 Since being dispossessed of their land by one or another party, the San cultural roots have been threatened. They have been unable to practice their traditional skills and knowledge, one effect of this being that San women, men and children alike are degraded by others as culturally 'rootless', which further undermines the already shattered San cultural dignity and pride. This despairing situation is probably the root cause of the widespread alcohol abuse in many San communities, which obviously leads to other problems, such as violence and theft. As Le Roux writes "most San people who were questioned about the reason for the San's reported tendencies for increased drinking said that the drink made them feel powerful, brave, or made them forget their poverty and hunger".

44. Nutrition and Healthcare

44.1 Since most San occupy the lower rungs of the social ladder, their poverty and vulnerability make them more prone to infection by treatable diseases such as tuberculosis and malaria. HIV/AIDS is reported to be on the increase among San communities. This could be explained by the fact that San communities that hitherto were isolated from other ethnic groups, have now been exposed to these groups, and tourism has been encouraged in most San communities, further exposing them to visitors from other areas. The average life expectancy of the San is 46 years, which is about 25% less than the national average of around 61.

44.2 The San have the worst access to healthcare of all Namibians, with more than 80% of them living more than 80 km (about an hour's drive away) from any sort of health facility, with these facilities being in addition very expensive to go to. They rely on mobile outreach centers which are often ill-equipped to deal with the complicated problems the people could potentially face. The mobile clinics make irregular visits to San communities and there are no arrangements

for emergencies. In some cases, the delegation was informed that the staff of the mobile units were usually rude and hardly spoke the San languages, with the likely risk of miscommunication and wrong diagnosis. In Masambo, Omega III and Mushanshani Villages there are no health facilities and the residents, who are usually very poor, find it very difficult to access health facilities. In Masambo and Omega III in particular transportation is a major problem.

- 44.3 The majority of the health problems that the San face are related to their poverty and marginalization. Diseases such as AIDS, tuberculosis and malaria can affect all Namibians but, due to lack of information, low standards of living and the unavailability of adequate treatment, the impact on the San is greater than on the ordinary Namibian.
- 44.4 The San communities are the only ethnic group in Namibia whose health and education status have declined since independence. This can be explained by the loss of their land and means of livelihood as hunter-gatherers, resulting in a rapid decline into destitution and cultural breakdown. Due to poverty and the high unemployment rate, coupled with the fact that most of them have been confined to villages and prohibited from hunting, they have lost their original sources of food and depend almost entirely on the government for food. They are not able to grow enough food to feed themselves. The little they grow is usually destroyed by animals. The result has been persistent hunger in the San communities leading to poor feeding, which affects their immune system and resistance to diseases. Most San communities also lack clean potable water, and in Masambo and Omega III in particular, the water seems to be contaminated. The residents of Omega III blame the water for the numerous ailments in the village.

45. The San and Education

- 45.1 The San in Namibia remain the least educated sector of society. It is even suggested that no other language group is even remotely close

7) Suzman, James. *An Assessment of the Status of the San in Namibia*. Legal Assistance Centre. Windhoek: April 2001.

8) Ibid.

to the San in the area of education. The literacy rate among the San is the lowest, at just 23% compared to a national literacy level of 66%.⁷

- 45.2 Enrolment rates show that there has been an increase in the number of San children attending school over the years. Yet, this is still woefully inadequate and some researchers suggest that if all San school children of school age were to attend school, there would need to be an additional 8-10,000 places created for them in the system.⁸
- 45.3 The increase in enrolment has unfortunately not been matched with an increase in teachers or teaching materials. There is an acute shortage of teachers in San schools and inadequate teaching materials for the teachers and reading materials for the learners. In Masambo, for example, there were only two teachers teaching three grades and, in Omega III, there were only five teachers for the entire grade seven school. The teachers complained about the lack of teaching materials such as books, blackboards, chalk, etc. There are no houses for teachers and, in the case of Omega III, the headmaster was sharing the school store with another staff member.
- 45.4 The increase in enrolment is deflated by a corresponding increase in school drop-out rates among San learners. It is suggested that, as the San progress up the grades, the drop-out rate increases. As a result, there are very few San learners in lower secondary schools, even fewer in upper secondary and a marked absence in tertiary institutions.
- 45.5 This high drop-out rate has been explained in many ways. Some suggest that the reasons vary as they progress in education. In primary schools, there are less drop-outs because the pupils go to school closer to their parents and rarely mix with pupils from other ethnic groups. In secondary school, they move away from their parents and are put in hostels where they have to face children from other ethnic groups. James Suzman suggests that, under such circumstances, many San children face ethnically motivated ridicule from other students and even teachers, which encourages lower attendance and poor performance.⁹

7) Suzman, James. *An Assessment of the Status of the San in Namibia*. Legal Assistance Centre. Windhoek: April 2001.

8) Ibid.

9) Ibid.

-
- 45.6 In Namibia, education for the San is free from grades 1 to 10. However, in practice there are instances of schools demanding tuition fees from San pupils. After grade 10, however, the government ceases to support the San and requires the parents or philanthropic organizations to continue.
- 45.7 The fees waiver for the San, that is, tuition, uniforms and hostel fees, is believed to be in recognition of the fact that the San have been marginalized for a very long period and have the lowest literacy rate in the country. It is also in recognition of the fact that San parents are poor and cannot afford to pay fees for their children.
- 45.8 It would be unproductive both for the government and the San community if San learners were to be educated and abandoned mid-way. Since the government has recognized their vulnerable situation and undertaken to honour its obligation as government, it should endeavour to ensure that San learners are assisted up to a reasonable level of education, at least to grade 12.
- 45.9 In Mkata Village in the Ntja Jaqna Conservancy, the enrolment rate from grades 1 - 6 was reported to be 100%. After grade 6, the children have to travel to Mangeti, some 15 km from Mkata to attend grade 7. The delegation of the Working Group was informed that some children simply decide not to continue because of the distance. Some went to Mangeti for a few months and stopped. After completing grade 7 at Mangeti, the learners have to move to Tsumkwe for grades 8 - 10 as there are no secondary schools in Mangeti. Tsumkwe is about 80 – 100 km from Mkata. Here again, some children simply declined to continue. Thus, there are very few children who eventually make it to secondary school from the village. The few who make it to secondary school have to contend with all the ridicule and stereotypical discrimination from other learners and teachers. Some simply cannot withstand the humiliation and decide to abandon school. Those who brave the humiliation and continue to grade 10 have another hurdle awaiting them. They either pass the grade 10 examinations or that is the end of their education. Even if they do pass, they must now turn to their parents for support to continue.

In Mkata Village, therefore, there are students who failed the grade 10 examinations and could not continue because they had to pay to repeat, there are those who passed the exams but could not proceed because their parents could not afford to pay their fees in grades 11 and 12 and as a result, the village has never produced a grade 12 graduate.

- 45.10 Another problem with the education of the San is the lack of mother tongue instruction in primary schools. Mother tongue education has been introduced in very few schools in Tsumkwe district. Many San groups acknowledge the importance of mother tongue education for at least the first three years of school. These groups value the development of critical thinking skills as well as promoting the retention of endangered languages and heritage.
- 45.11 In the Nyae Nyae Conservancy, the Ju |'hoan San have introduced the concept of the Village Schools Project (VSP), which has provided a matrix for the creation of a broad range of local-language curriculum and enrichment materials. There has been wide participation of community members of all ages in the production of materials. The VSP has also tried to honour the very effective means of learning and child socialization long practiced by the Ju |'hoansi and other San. San societies have valued equality and sharing highly, and in the VSP their children's learning has taken place in a hands-on, informal, narrative and experience-rich environment, involving children of all ages with local teachers and many adults.
- 45.12 Local language committees have taken on the challenge of providing user-friendly orthographies of these phonetically complex languages, often with the help of professional linguists and anthropologists. Linguists have also sometimes been in a position to provide grammatical training in linguistic methods to young San who may be contemplating becoming scholars of their own languages. In a few cases, computer literacy and the use of digital media have also become available to San educational projects, where technological empowerment has quickly increased the political effectiveness of the surrounding communities.

45.13 This said, it is important to note that the structural violence often afflicting San in the wider societies in which they live continues to have deleterious effects on their education as well as on other areas of life. Inter-ethnic strife is frequent in school contexts, and is often sufficient to contribute to San student absenteeism and educational failure.

45.14 However, though there remain many areas where San still have little access to educational opportunities, the places where they do, are having an impact on their chances for the future. NGOs such as WIMSA have done a great deal to provide secondary and tertiary educational options to some San students, who are then effective models for other San to emulate.

46. San Traditional Authorities

46.1 An ongoing obstacle to securing San human rights in Namibia is the government's continued denial of official recognition for some San traditional authorities. According to Article 102 (5) of the Namibian Constitution, a Council of Traditional Leaders has been established "in order to advise the President on the control and utilisation of communal land and on all such other matters as may be referred to it by the President for advice". The now more than 40 officially recognised Namibian traditional authorities play a vital role in allocating communal land – which makes up, according to Harring and Odendaal,¹⁰ 41% of the "82.4 million hectares of surface area in Namibia". Traditional leaders allocate land for residential purposes, cultivation and grazing.

46.2 To date the Namibian government has officially recognised only two of the six Namibian San traditional authorities, namely the !Kung Traditional Authority in Tsumkwe District West (formerly West Bushmanland) and the Ju|'hoan Traditional Authority in Nyae Nyae. One core duty of a traditional authority is "to ensure that the members of his or her traditional community use the natural resources at their disposal on a sustainable basis".¹¹ The !Kung and Ju|'hoan Traditional Authorities support the establishment of the Nǀa Jaqna

10) Harring, Sidney L. and Odendall, Willem (2002). *One Day We Will All be Equal: A Socio-legal Perspective on the Namibian Land Reform and Resettlement Process*. Windhoek: Legal Assistance Centre.

11) Traditional Authorities Act of 2000: 3(2)(c)

(!Kung) and Nyae Nyae (Ju | 'hoan) conservancies respectively, but they do not get directly involved in conservancy affairs.

46.3 The former President denied official recognition to the Khwe Traditional Authority of West Caprivi, the !Xóõ Traditional Authority of Omaheke South and the Ju | 'hoan Traditional Authority of Omaheke North.

46.4 In the case of the Khwe, the Minister of Home Affairs wrote on the President's behalf in response to the former's application for recognition that "the area claimed by the Khwe community traditionally in terms of chieftainship belongs to the Mbukushu traditional authority"; in the case of the !Xóõ, the President based his decision on the assumption that "there is no history of the establishment of !Xóõ traditional authority"; and in the case of the Ju | 'hoansi, he instructed the relevant Minister to inform the Ju | 'hoan chief designate that "there is no need to establish another traditional authority for the Ju | 'hoan community".¹²

46.5 The government wants the Ju | 'hoan tribe in Omaheke region to be under the leadership of SWAPO member and Chief of the Ju | 'hoan tribe in the Tsumkwe area, Bobo Tsamkxao =Oma. The Ju | 'hoan tribe in Omaheke, who number around 2,000, have chosen their own Chief, Frederik Langman, as their tribal leader. They argue that even though the two tribes are from the same language group, they speak different dialects and stay in a different area with a different environment and culture.

46.6 Many Namibians, including some government officials, believe that the San comprise one homogenous group and therefore need only one traditional authority. People also assume that the San lack leadership structures, speak the same language and have no ties to any land because they are nomadic. On the contrary, San is a common term to describe an ethnic group composed of more than six sub-groups with different languages, some completely unrelated. The San leadership structure may not be so apparent because it is dissimilar to the common hierarchical leadership structures and because

12) It is worth noting that there is another Ju | 'hoan San community in Tsumkwe district whose members are different from those in Omaheke region.

they choose to make decisions by reaching consensus, but all San communities exhibit leadership structures which they have followed for years.

- 46.7 The denial of recognition for the Khwe, Ju|'hoan and !Xóõ Traditional Authorities means they will remain excluded from the local land boards in charge of allocating land to community members and, in the case of the Khwe who have been put under the leadership of another ethnic group, it means their rights to access land and natural resources for their livelihood is further compromised.
- 46.8 If the government continues to deny them official recognition, they will remain excluded from the land boards in charge of allocating communal land to community members. The denial of recognition is weakening their position and strengthening the ongoing domination of their people by other ethnic groups, perpetuating San marginalisation in local political affairs.
- 46.9 The government's authority to confer recognition or withhold it from traditional leaders, even in opposition to local preference, is controversial because of the leaders' influence on local events, including local police powers. In some cases, the government could be seen to be withholding recognition from genuine traditional leaders for political reasons. This has been the case with the Khwe community in Western Caprivi, where most of the San are believed to be either in the opposition or sympathizing with it.
- 46.10 A problem facing all current San traditional leaders is that the young and formally educated members of their communities do not respect their traditional leaders and tend to follow civic but not traditional guidance. The majority of leaders rely on traditional values and have either attained a low level of formal education or are illiterate.
- 46.11 The San traditional leaders attach profound significance to the fact that recognised traditional authorities will serve on the regional land boards and advise the President on land matters as members

of the Council of Traditional Leaders. They are painfully aware that if they do not gain a say on land matters, their marginalisation and domination by other ethnic groups will be further entrenched. The fact that recognised leaders are entitled to remuneration from the government is encouraging for the San, because the salary would enable them to visit their communities regularly, which is currently difficult for them as they often do not even have enough funds to pay for the public transport that enables them to reach at least some of their communities.

46.12 The Traditional Authorities Act, which came into effect in December 1995, defines the role, duties and powers of traditional leaders. The Act provides that customary law that is inconsistent with the provisions of the Constitution is invalid and delineates which types of crimes may be dealt with in traditional courts. The Act assigns to traditional leaders the role of guardians of culture and tradition, and also mandates that traditional leaders elected to Parliament must choose between their traditional and elected offices before the end of 1996. While the latter requirement could be seen as contrary to the provisions of the Charter, in particular Article 13, it also puts at a disadvantage indigenous communities such as the San and Himba. In most of these societies, the traditional leaders may be the only knowledgeable persons that could effectively articulate the concerns of the community and in most African societies, including the indigenous communities, traditional leadership is hereditary. To require a community to disrupt, or an individual to abandon, a harmless traditional customary practice as a condition for exercising their constitutionally guaranteed right, would not only be a violation of the collective right of the community, but also a violation of an individual human right to participate in the affairs of his/her country.

46.13 Some traditional leaders and human rights organizations have maintained that this provision is unconstitutional and court challenges are being pursued.

47. Political Representation

47.1 The San are the least represented in government structures. Apart from Tsumkwe District Constituency where they are represented in Parliament and have a majority of San as Senior and Junior Councilors, they are insignificant in other regions and nationally. The only San MP seems not to be representative of all the communities, as many of those outside Tsumkwe seem not to know him and complain that he does not articulate their grievances in Parliament.

PART VI

48. Conclusions and Recommendations

- 48.1 This report presents a narrative account of discussions between the delegation of the African Commission's Working Group on Indigenous Populations/ Communities and major stakeholders working to protect the rights of indigenous populations in Namibia. It is the view of the African Commission that the mission succeeded in establishing dialogue between the African Commission, the Government of the Republic of Namibia, the local civil society organizations and the indigenous communities themselves. The main aim of the mission was to work with all stakeholders to enhance the human rights situation of indigenous communities in the country. Approaches to achieving this may be different but, through dialogue, the African Commission believes a common ground can be found.
- 48.2 The African Commission notes the positive initiatives taken by the Government of the Republic of Namibia to promote and protect the human rights of indigenous populations in the country, such as free education to indigenous groups, training programmes, etc. The African Commission, however, believes that there is room to do more and calls on the government to intensify its programmes and policies aimed at enhancing the rights of indigenous populations.
- 48.3 The African Commission makes the following recommendations, which it hopes will be implemented by the government as a first step towards advancing the rights of indigenous communities in the country. The recommendations are made with due regard for the measures already taken by government to enhance the welfare of indigenous populations in the country and bearing in mind the socio-economic and political situation of the country, and with the understanding that the African Commission would be available at all times to support the government in their implementation. The re-

commendations also keep the gateway to dialogue between the African Commission and the Government of the Republic of Namibia open.

49. Education

- 49.1 The African Commission appreciates the effort being made by the government to provide free education to the San as education is the catalyst to development. The poverty, marginalization and low life expectancy of the San can only be addressed if they are informed through education. However, the government should provide the San with sufficient educational support to enable them to make informed decisions about their development and the development of their future generations. It is not sufficient to provide them with free education up to grade 10 and then abandon them. The government should make further sacrifices and provide the San with free education at least up to grade 12 level. The government should ensure that the policy of free education for San learners is respected and implemented.
- 49.2 Those San learners who fail grade 10 examinations should be supported by the government to repeat and those who drop out of school should be encouraged to return or be provided with vocational training that is relevant to the economic development of the country. Vocational training should also be introduced for grade 10 drop-outs and others unable to proceed to grade 11 in order to avoid wasting human resources.
- 49.3 The government should provide mother tongue education for all San pupils up to grade 3 and train San teachers to teach them. Grade 10 drop-outs could be trained as mother tongue instructors in their communities.
- 49.4 Complaints about discrimination and stereotypical utterances against San learners should be thoroughly investigated and punished. The government should criminalize discrimination in all forms but in particular based on race or ethnicity in accordance with

Article 4 of the Convention on the Elimination of all Forms of Racial Discrimination and Article 2 of the African Charter on Human and Peoples' Rights.

50. Training

50.1 The government should provide agricultural training to those San members who wish to engage in either crop or cattle farming, or both. In Mkata, the residents complained about members of some other ethnic community refusing to plough for them, rendering them helpless. They should all be trained in farming techniques and provided with the necessary farming tools and equipment.

51. Land rights

51.1 The San should be provided with communal land they can call their own. Access to land and land security for the San population is the most critical element that should be addressed by the Namibian government. Land security would greatly facilitate efforts on the part of the government, NGOs, and the communities themselves aimed at addressing their critical health issues, educational and political marginalisation, and numerous social problems. The protection and expansion of land rights is one of the most fundamental interventions that can be made on behalf of the San in Namibia to secure their sustainable livelihood.

52. Traditional Leadership and Political Representation

52.1 The traditional leadership of the San should be recognized by the government. Insisting that a particular ethnic group such as the Khwe San in Western Caprivi be ruled by another ethnic group, the Mbukushu, is a recipe for disorder and, eventually, conflict. Government should legislate affirmative action measures to increase the representation of San and other indigenous communities in governance structures such as Parliament, the National Council and local government structures. A quota system could be adopted to give indigenous communities a certain percentage of representation in these structures.

53. Health

- 53.1 The government should establish health centers nearer to San communities or ensure that mobile health centers visit these communities on a regular basis.

54. Employment

- 54.1 The government should encourage the development of income-generating activities in and around San communities and give priority to the employment of San members to fill vacancies. The government should ensure that labour laws are enforced so that proper working conditions are ensured for the San.

55. Hunger

- 55.1 San communities should be encouraged to grow crops for their subsistence. Those living in parks should be provided with safe places where their crops will not be destroyed by animals and, in the event the crops are destroyed, they should be entitled to compensation from the government.
- 55.2 Food aid and drought relief should be monitored on a regular basis and local officials should be given adequate means to enable them to deliver food aid to the communities. The delegation was surprised to learn that tonnes of maize had been left to rot in a warehouse in Katima Molilo in Caprivi region while San residents in the region had been going for months without food.
- 55.3 The San community should also be issued with Special Game Licenses to enable them to hunt for specific animals that can supplement their nutrition or income. In particular, the government should consider establishing a conservancy for the Khwe of Western and Eastern Caprivi, where the people already live side-by-side with wildlife.

56. Discrimination

56.1 The government should ensure that acts of racial discrimination are dealt with in accordance with internationally recognized instruments such as the African Charter, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Discrimination Against Women. The government should also establish sensitisation programmes for civil servants on issues relating to anti-discrimination, particularly with regard to the San and other indigenous peoples.

57. Recognition of Indigenous Peoples

57.1 The government should ratify ILO Convention 169 on Indigenous and Tribal Peoples. The government should further include recognition and protection of indigenous peoples in its constitution and in national policies that affect the lives of the San and other indigenous peoples in Namibia. Where necessary, affirmative action should be considered.

58. Submission of Reports

58.1 The Commission acknowledges that the Republic of Namibia has submitted its initial Report to the African Commission in conformity with Article 62 of the African Charter on Human and Peoples' Rights. However, the African Commission wishes to note that the Republic of Namibia has overdue reports to submit to it and urges the government to expedite the submission of these reports and to include in them the various issues on indigenous populations in the country and measures taken or being taken to implement these recommendations.

59. To the NGOs

59.1 NGOs should continue and intensify their support to promote the welfare of indigenous communities in the country. NGOs should

also work closely with government and other institutions to enhance the welfare of indigenous communities in the country.

60. To the International Community

- 60.1 The international community, in particular donors, should support San projects, especially the conservancies, and support the Namibian government to provide adequate services to San communities.

