



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

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Summary record of the 1878th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 29 July 2008, at 3 p.m.

Chairperson: Ms. Dah

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The meeting was called to order at 3.10 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Eighth to twelfth periodic reports of Namibia (CERD/C/NAM/12; list of issues and written replies, documents without a symbol, English only)

1. *At the invitation of the Chairperson, the members of the delegation of Namibia took places at the Committee table.*
2. **Mr. Namiseb** (Namibia), referring to Namibia's complex colonial past and apartheid, said that the reporting progress under the Convention provided his country with a useful opportunity for self-assessment on the progress made. Pursuant to article 144 of the Namibian Constitution, the general rules of public international law and international agreements to which the country was a party were automatically incorporated into domestic law. The provisions of the Convention could thus be directly invoked before domestic courts.
3. Article 23 (1) of the Constitution prohibited the practice of racial discrimination and of the ideology of apartheid. The Racial Discrimination Prohibition Act of 1991 criminalized racial discrimination and established relevant punishment and remedies, including compensation. It had been amended in 1998 after a ruling by the High Court had declared section 11 of the Act unconstitutional. Details on the ruling and the subsequent amendments were provided in the report.
4. Under the Act, a racial group was a group of persons defined by reference to colour, race, nationality or ethnic or national origin. Complaints of racial discrimination could be addressed to both the police and the Office of the Ombudsman. The Ombudsman was an independent institution that was competent to recommend the institution of proceedings by the Prosecutor-General. The Council of Traditional Leaders, established in accordance with the Council of Traditional Leaders Act No. 13 of 1997, advised the President on issues related to communal land and traditional matters.
5. Since independence, efforts had been made to eliminate, including through resettlement, the geographic segregation of ethnic groups which had been characteristic of the apartheid era. Detailed population statistics were provided in the report.
6. Over the years, government policies and programmes had been implemented to enhance the socio-economic status of marginalized groups. Actions included empowerment programmes targeting the San people, among others. Inequalities in access to education had been addressed through a policy entitled "National options for educationally marginalized children".
7. Access to land had been dealt with through ongoing land reform, which aimed at resettling previously disadvantaged groups. The National Resettlement Policy (2001) singled out the San as a specific target group for resettlement.
8. Affirmative action was provided for in article 23 (2) of the Constitution. The Affirmative Action (Employment) Act of 1998 envisaged the progressive realization of equity in employment; the Employment Equity Commission oversaw implementation of the Act and investigated relevant complaints. Employers were required to submit for approval by the Commission action plans for the elimination of racial discrimination at the workplace as well as periodic reports on the implementation of those plans. The Affirmative Action (Employment) Act prescribed penalties for employers that failed to submit reports or implement action plans. Given certain shortcomings in the implementation of the Act, an Action Impact Assessment Study had been commissioned in June 2004 in order to review the progress made. The study had revealed that progress had

been slow, and steps had been taken to ensure more stringent implementation of the Act. The Labour Bill 2007, which provided for equality in employment, was expected to enter into force in mid-2008 once the guidelines on mediation and arbitration had been finalized and mediators appointed.

9. Affirmative action measures had also been taken in the area of land reform, mainly targeting disadvantaged groups, especially the San and former farm workers. Corrective action had been taken to redress social, economic and educational imbalances in Namibia, including in the police force, the defence force and the prison service.

10. Chapter 3 of the Constitution enumerated a number of civil rights to be respected by all State institutions. Article 4 of the Constitution contained provisions on the acquisition and loss of citizenship, including acquisition by marriage, which had been translated into law through the Citizenship Act of 1990.

11. The Agricultural (Commercial) Land Reform Act of 1995 dealt with the acquisition of farms and distribution of land to disadvantaged groups, including women, and compensation. The Land Reform Advisory Commission advised the Ministry of Lands on issues arising in the context of land redistribution; the Land Tribunal was competent to resolve disputes. The Affirmative Action Loan Scheme enabled emerging farmers, who in the past had had difficulty accessing loans from commercial banks, to obtain credit through the Agricultural Bank. The Ministry of Land was exploring further options for assisting resettled farmers through loan schemes.

12. In order to facilitate progress towards a culture of human rights, the Office of the Ombudsman conducted national awareness activities. The Human Rights Documentation Centre of the University of Namibia was engaged in research and the dissemination of human rights-related information. The Ombudsman's Human Rights Advisory Committee, established in April 2006, comprised representatives of civil society organizations, Government and the Council of Churches.

13. **Mr. Kamatuka** (Namibia) said that the report did not refer to "indigenous peoples", since all ethnic groups in Africa were indigenous to the continent. Therefore, when talking about the San people, in particular, the term "most marginalized people" was used. Giving a brief overview of the history of the San people, he said that most San communities continued to lead a traditional way of life, living off the land and hunting much like their ancestors. Owing to the rapid depletion of the resources for their livelihood, they needed to adapt to modern life. The San Development Programme, adopted in 2005, aimed at expediting their economic integration. The Programme included projects for educational integration and resettlement, including to ancestral lands from which they had been driven in colonial times. Projects for local employment generation targeting the San included community conservancy programmes, agricultural projects and projects to enhance the status of San women. The projects were financed partly through the private sector and international donations. The Government also conducted awareness campaigns to sensitize the public to the plight of the San people.

14. **Mr. Namiseb** (Namibia), replying to question 1 of the list of issues, said that Namibia's 13 political regions were not divided along ethnic lines. However, some regions were still home to specific language groups, which was a legacy of the homelands for certain language groups created under apartheid. Some centrally located regions, including around the capital, had become more ethnically mixed after independence. Population censuses were conducted every 10 years. The most recent population census had been conducted in 2001; between censuses, surveys of housing and income provided some information on the socio-economic situation of ethnic groups.

15. Turning to question 2, he explained that Namibia had a monist legal system whereby the Convention, once ratified, became automatically applicable at the national level and

could be directly invoked in domestic courts. Its provisions took precedence over parallel domestic law. Efforts had been made to harmonize domestic provisions with international law.

16. Law reform was a slow but ongoing progress (question 3) entrusted to the independent Law Reform and Development Commission, which comprised lawyers, university lecturers, government representatives and members of the Law Society. The Commission had successfully finalized a number of projects, including the project on customary law marriages and the Married Persons' Equality Act of 1996. Legislation on customary law marriages would be adopted once customary law and common law succession schemes had been harmonized. The abolition of legislation from the pre-independence era was time-consuming, as it was important to prevent legal lacunae. Insufficient resources hampered the process, and foreign experts had been recruited to expedite it. Key areas of law reform included succession and the administration of estates, marriage, housing and property rights, immigration and dual citizenship, human trafficking and access to justice.

17. Replying to question 4 of the list of issues, he said that measures had been taken to accelerate the economic integration of the San people. The relevant decisions were taken with public participation. The Government recognized traditional leaders, and all development programmes were implemented with the participation of the communities concerned. The San Development Programme, introduced in 2005, had recently been extended to the Ovahimba people.

18. Progress with affirmative action (question 5) had been slow. In response, regulations had been tightened and employers that failed to take the necessary action were subject to penalties. The Labour Advisory Council was assisting in those efforts. Applications from employers for exemption from the obligation to submit reports and implement action plans were being scrutinized more closely.

19. Turning to question 6, he informed the Committee of the Government's civic organization partnership policy adopted in 2005 as part of Namibia's Vision 2030. The policy aimed at establishing a working partnership with civil society organizations in order to ensure their active involvement in decision-making. The Electoral Commission, the Office of the Ombudsman, the Anti-Corruption Commission, the Social Security Commission, the Woman and Child Protection Unit and law enforcement agencies all cooperated with civil society organizations in the areas of good governance, human rights promotion and protection and social security. There were no NGOs that dealt exclusively with issues of racial discrimination or gender-based violence; Namibian civil society organizations took a holistic approach to human rights protection.

20. Replying to question 7, he said that the eradication of the ideology and practice of apartheid was an ongoing process. The main instruments were the Prohibition of Discrimination Act and the institution of the Ombudsman, who was mandated to receive complaints of racial discrimination. In order to assess the progress made, the Office of the Ombudsman was currently holding hearings on public perception of racial discrimination. Victims were also being interviewed in order to identify barriers to seeking judicial redress.

21. Pursuant to the Constitution and the 2001 Education Act, schools had been desegregated (question 8). Public schools were now open to all children irrespective of race, colour, region or ethnic group. The prohibition of segregation in education also applied to private institutions.

22. Replying to question 9, he said that it was important to balance the prohibition of discrimination with freedom of expression. The Racial Discrimination Prohibition Act was weighted in such a way as to address that objective effectively.

23. Chapter 3 of the Constitution provided for the rights of non-citizens (question 10), including refugees and asylum-seekers. Non-citizens had equal access to justice.

24. The Traditional Authorities Act of 2000 (question 11) covered all indigenous groups. The Government had recognized 42 traditional authorities under the Act, including five Damara communities and three San communities. Two more Damara communities and two more San communities had been recommended for recognition. The written replies contained a list of the communities that had been recognized and those in the process of recognition.

25. Turning to question 12, he said that the Ministry of Lands and Resettlement was responsible for all matters related to land reform. The basis for land acquisition was the “willing buyer-willing seller” principle; alternatively, land could be expropriated pursuant to the relevant constitutional provisions. Adherence to the “willing buyer-willing seller” principle had slowed down the acquisition of farms. Both systems were described in detail in the written replies.

26. Land acquisition was followed by resettlement, which was voluntary movement from a place or area marked by poor social conditions to a place designated by the Government where land and other social amenities could be provided. The aim of resettlement programmes was the distribution or allocation of land to landless citizens, thus enabling them to ensure their livelihood. Target groups included the San, former combatants, displaced persons, persons with disabilities and people from overcrowded communal areas. Regional resettlement committees considered individual applications for resettlement, which were then forwarded to the Land Reform Advisory Committee for approval. Tenure systems in Namibia were freehold tenure, customary land tenure, leasehold tenure, grazing rights, flexible land tenure and State ownership. Details of those systems were contained in the written replies.

27. In response to question 13, he said that most of Namibia’s protected areas had been proclaimed as such prior to independence. Legislation adopted in 1996 had given conditional use rights over wildlife to communities that formed a conservation management unit called a “conservancy”. Since then, many local communities had embraced the opportunity to manage their own wildlife and tourism activities, and conservancies were now found in most regions.

28. The conservancy approach had proven effective in both increasing wildlife numbers and in fostering rural development. Since independence, no indigenous groups had ever been dispossessed of their traditional land in connection with the establishment of game reserves or national parks. In addition, the Government had taken a range of measures to enhance the socio-economic development of communities living in those areas and would continue to involve stakeholders in the management of protected areas.

29. Replying to question 14, he said that inheritance was governed by a host of laws from colonial times which regulated areas of private law according to the racial origin of the person. At the same time, in the case of black Namibians, inheritance remained largely governed by native customary law. Following a series of court decisions, the Estates and Succession Amendment Act had been enacted in 2005 to address the racial discrimination underlying earlier provisions. It was nevertheless difficult to develop one rule that could be applied to all, given the distinct differences in lifestyles and customs. The key difference between the two systems was that, pursuant to Roman Dutch law, the inheritance went to the surviving spouse and descendants, whereas customary law provided for inheritance by a more distant relative, who also inherited the obligation of looking after the spouse and children of the deceased. Given the complexity of the task of harmonizing the two systems, his delegation looked to the Committee for guidance.

30. The Law Reform and Development Commission had completed its work on the Succession and Estates project and its proposals would be forwarded to the Ministry of Justice. The Commission had proposed three possible models. The first would be a two-tiered approach where both systems would continue to apply to the respective communities, provided that the provisions were consistent with the Constitution. The second would be to apply Roman Dutch law whereby the surviving spouse and children would be the only heirs; that option might nevertheless meet with considerable resistance from traditional communities. The third option contemplated a compromise solution whereby the estate would be divided and a fixed percentage would go to the surviving spouse and children and the other part would fall to heirs under customary laws.

31. Turning to question 15, he said that efforts towards the educational integration of children from marginalized communities included the establishment of satellite schools; local language teaching during the first three years, with English as a subject of study; and the introduction of mobile schools for the nomadic Ovahimba people. In order to enhance marginalized groups' access to tertiary education, entry requirements had been made more flexible and a quota system had been introduced.

32. Affirmative action had been taken in order to create equal opportunities for all language groups (question 16). A review now being conducted would be used as a basis for developing legislation to promote the social and economic empowerment of disadvantaged groups.

33. Replying to question 17, he said that combating the high incidence of rape of San women by members of other communities had proven a challenge. The Combating of Rape Act of 2000 addressed the problem in general, and awareness campaigns were being conducted on the specific problem of rape of San women. Measures were also being taken to foster the educational and social empowerment of the San.

34. In order to ensure equal representation of all ethnic and language groups (question 18), chapter 12 of the Constitution provided for the establishment of regional and local government structures. The Constitution also provided that regional and local authorities were geographically delineated, with no reference to race, colour or ethnic origin, in order to ensure integration of previously segregated groups. Article 10 of the Constitution established the right of all citizens to run for office, without discrimination. Political parties were encouraged to ensure the diversity of their membership.

35. Replying to question 19, he said that there were two regional ombudsman offices and two additional posts had been created in 2007. The establishment of further regional offices was planned. A human rights unit was currently being set up within the Office of the Ombudsman to deal specifically with human rights education and awareness-raising campaigns. The budget of the Office had been increased for 2008–2009.

36. The low number of complaints of racial discrimination received by the Office of the Ombudsman might be partly attributable to a lack of awareness of the problem and insufficient knowledge about complaints mechanisms. The only complaint received in 2008 was currently being investigated. His delegation would inform the Committee of the outcome of the public hearings to identify the reasons for non-reporting of acts of discrimination. The hearings were also intended as a platform for victims of discrimination to report those incidents.

37. Replying to question 20, he referred again to the public hearings being conducted by the Office of the Ombudsman.

38. Turning to question 21, he said that given Namibia's apartheid past, human rights education was considered an indispensable element of the education process. Human rights were part of primary school civic education; at the secondary and tertiary level there was a

subject entitled “Education for human rights and democracy”. Human rights education covered issues such as the rule of law, conflict resolution, tribal conflicts, ethnic groups, intercultural understanding and international human rights instruments, including the Convention.

39. The Government was exploring options for making a declaration under article 14 of the Convention (question 22) and would inform the Committee of its decision when it submitted its next periodic report.

40. **Mr. Ewomsan** (Country Rapporteur) welcomed the resumption of the dialogue with the State party after a decade of silence and acknowledged the complex history of discrimination against the non-white population. He gave a brief overview of the socio-economic situation of Namibia, referring to the north-south and urban-rural development gap. With regard to the country’s ethnic composition, he noted that it was home to 11 indigenous languages, with most Namibians being bilingual or trilingual. He also briefly described the political developments of post-independence Namibia.

41. Despite democratically held elections, party politics were reportedly based on ethnicity, and the Government had been accused of favouritism towards the Ovambo, who made up most of the membership of the ruling South West Africa People’s Organization (SWAPO). Opposition parties appeared to be largely composed of Damara, Herero, Afrikaners and Nama, and opposition leaders had openly accused the State party of practising an economic and social policy that marginalized their communities. He asked what the State party intended to do to address those problems and requested information about the criteria for forming a political party.

42. He would welcome additional information about the scope of the 1998 amendments to section 11 of the Racial Discrimination Prohibition Act. He had been surprised to learn that the Office of the Ombudsman had received only three complaints of racial discrimination since 1996. It appeared that there were certain obstacles to obtaining redress for acts of racial discrimination and he encouraged the State party to make a declaration under article 14 of the Convention. He asked whether members of the judiciary were being trained to identify acts of racial discrimination and impose the corresponding penalties.

43. The Committee had been informed that ethnicity-based discrimination persisted in access to property, education, employment, health and housing. Government programmes aimed at enhancing the socio-economic status of marginalized groups, especially the San and Ovahimba, had proved ineffective in breaking the cycle of poverty, discrimination and social marginalization. Only one-fifth of San had access to land, although their livelihood depended on agriculture. The Government’s land policy had not improved the situation of the San, who were disproportionately affected by HIV/AIDS, poverty and low life expectancy. The frequent rape of San women by members of other ethnic groups was reportedly due to negative stereotyping of San women and the failure of the police to investigate complaints. San agricultural workers were exploited and sometimes worked only in exchange for food or alcohol. State assistance for AIDS orphans reportedly did not reach San children, because few were enrolled in education and most lacked the identity documents required to access scholarships. He asked what had been done to address those problems and whether the San were consulted on programmes aimed at improving their situation.

44. In order to illustrate the persisting discrimination in employment, he referred to the case of a white employer who, on 29 April 2008, had dismissed his black employees who had requested work uniforms with the words: “You don’t need uniforms, you’re black. God gave you uniforms already.” He commended the State party for its awareness campaigns and the implementation of affirmative action measures, including measures taken to promote black people’s access to managerial posts. Given the continuing exploitation of

farm workers in the absence of a minimum wage, the early entry into force of the Labour Bill 2007 was highly desirable.

45. He asked how the Government intended to address discrimination against black women in regard to marriage and succession. While he appreciated the difficulty of changing customary law practices in remote areas, it was important to bring some of the outdated customary practices in line with present-day standards and to harmonize domestic regulations with international norms. Customary law marriages reportedly did not afford the same protection to women as ordinary civil law marriages. That was of particular concern in the north of the country, where 27 per cent of the population had been married under customary law.

46. With regard to the Council of Traditional Leaders, he asked whether it was true that the Government granted or withdrew recognition of traditional chiefs as it saw fit, and sometimes on political grounds. If so, he wished to know what the State party intended to do to end that discriminatory practice. The Kwe San living in the Caprivi Strip had reportedly often been the target of aggression. He asked the delegation to comment on the reported execution of 15 members of that community who had been captured by the Namibian security forces in August 2000.

47. He would welcome an update on the situation of the 6,000 refugees and 9,048 asylum-seekers in Namibia. He also wished to know why Cuban doctors working in Namibia in the framework of a bilateral cooperation agreement were not granted permits to travel abroad.

48. **Mr. Kemal** said that post-independence Namibia was marked by an unfortunate legacy of colonialism, and high hopes were placed on the authorities to right the historical wrongs. Groups that continued to lead a traditional way of life required special protection. Many of Namibia's ethnic groups sought to regain control over traditionally owned land, including the San and the Baster, who were disproportionately affected by poverty and underdevelopment. Only 20 per cent of San Bushmen had access to land and their numbers had dwindled to the level of 1950. Much progress could be achieved if efforts in those areas were stepped up. He asked what measures the Government intended to take to compensate the Damara and the Herero for their past suffering.

49. The State party's ethnic diversity had attracted much international attention. Any investment in the future of ethnic minorities, whose unique environment and traditional ways of life made Namibia a prime location for ethnic and eco-tourism, would be repaid many times over with tourism becoming an economically self-sustaining enterprise.

50. **Mr. Sicilianos** commended the Namibian Government for its affirmative action measures and invited the delegation to participate in the Committee's forthcoming thematic discussion on the subject of special measures. Misconceptions about special measures were widespread, and the Committee might benefit from the State party's experience in that regard.

51. Lack of access to land and education, poverty, low life expectancy and underrepresentation in State institutions affected San Bushmen in Namibia, but also in Botswana and South Africa. He invited the delegation to comment on NGO reports suggesting that Government-run projects for the San had a highly paternalistic approach and little success in empowering the target population. He requested detailed information on affirmative action measures planned in support of the San.

52. **Mr. de Gouttes** said that, given its apartheid past, the State party's engagement with the Committee was highly symbolic. Referring to paragraphs 32 to 48 of the report, he noted that effective prosecution of acts of racial discrimination had been undermined by a series of court decisions culminating in the amendment of the Racial Discrimination

Prohibition Act of 1991, narrowing its scope on the pretext of enhancing protection of the right to freedom of speech. As a result, incitation to racial hatred in itself was no longer subject to prosecution. He asked whether the legislative amendment might be the reason for the low number of proceedings instituted on grounds of racial discrimination. The delegation should explain how the restrictions introduced by the amendment were compatible with article 4 of the Convention.

53. Despite the measures taken for the economic and social empowerment of the San, NGO reports suggested that little had changed on the ground. The San continued to suffer discrimination in access to land, expropriation, extreme poverty, AIDS and political underrepresentation. He invited the delegation to offer its views on the matter and asked whether it was true that the key beneficiaries of Government programmes were the Ovambo, not the San.

54. **Mr. Lindgren Alves** said that he was somewhat uncomfortable with other members' expressions of concerns. Having had first-hand experience of Namibia before and immediately following independence, he was keenly aware of the challenges it faced. He commended the State party on its excellent, comprehensive report. Given the legacy of colonialism and apartheid and the attendant fracturing of ethnic groups, it was fully understandable that the State party pursued an integrationist multiracial social model. There was virtually no alternative. The criticism of SWAPO as a party dominated by the Ovambo dated back to pre-independence days; it had been untrue then and was probably untrue now. The question raised by the Country Rapporteur about the situation of Cuban doctors in Namibia was of no relevance whatsoever to the Committee's mandate.

55. The balanced way in which alleged cases of racial discrimination were reflected in the report, without always laying the blame on white people, was noteworthy given the suffering inflicted by the white colonial Powers in the past. The introduction of mobile schools to enable nomadic children to remain in education was also exemplary; he was unsure whether European countries would be willing to do the same for Roma children.

56. He vividly recalled the difficult situation in early post-independence Namibia and congratulated the Government on the progress made in less than two decades.

57. **Mr. Lahiri** said that he, too, recalled the early days of Namibian independence. The resistance to placing excessive emphasis on the role of individual tribes was understandable, given the pre-independence apartheid regime's efforts to highlight ethnic differences. Underdevelopment and poverty affected all tribes, not just minorities, and SWAPO had been re-elected with ever increasing majorities, which suggested popular support. Nevertheless, he did not wish to belittle the problems affecting the San people and hoped that the programmes aimed at improving their situation would produce a notable difference.

58. Namibia had taken the route of reconciliation, and that process required consultation, which inevitably slowed down reform. However, reconciliation must not be one-sided and benefit a single segment of the population: if it did, then more assertive policies were required. Efforts for reconciliation likewise must not be detrimental to development priorities. Given the affirmative action measures taken by the State party, it was somewhat disappointing that nearly two decades after independence, economic power remained racially concentrated; that the results of land reform had been negligible; and that education remained the privilege of a few. The State party should reconsider the "willing seller-willing buyer" principle in order to accelerate land redistribution. A Government that had so bravely fought for independence should not be deterred by legal and other obstacles in its way.

59. **Mr. Prosper** said that he would be interested in the State party's own views on the nature of racial discrimination in Namibia.

60. **Mr. Thornberry** requested additional information on the methodology used in the census, including the role of self-identification. He commended the State party's focus on language groups, which was an approach the Committee itself recommended sometimes to bypass problems that arose with references to ethnicity. He thanked the delegation for highlighting in its oral presentation the participatory nature of policymaking, which had not become clear in the report.

61. He asked the delegation to explain the concept of "integration" and to comment on how it might undermine the preservation of San culture.

62. Although the State party had affirmed that no indigenous group had ever been dispossessed of land, it had also mentioned policies that gave preference to people who had been removed from their land. He would welcome an explanation. Recalling the Committee's general recommendation No. 33 on the rights of indigenous peoples, he reminded the State party of international standards relating to expropriation, compensation and consent. He also requested clarification of the term "indigenous" as it related to rights.

63. He asked whether changes to customary law were based on consultation of the communities affected: any such changes should be based on the broadest possible consensus. He also wished to know whether people could opt for having their case heard by a customary court law, as was true for systems of religious law.

64. **Mr. Diaconu** acknowledged the extraordinary legal and institutional progress made in post-independence Namibia. Given the persistent difficulties in countries with a much longer history, it would be unrealistic to expect perfection in the present case.

65. The State party had justified the amendment of the Racial Discrimination Prohibition Act by the need to protect freedom of expression. The amended Act provided for non-liability under section 11 (1) if the person making a racist statement believed, on reasonable grounds, that the statement was true. "Truth" was nevertheless subject to interpretation and should not be a criterion for the applicability of the Act. Amended section 11 (1) also no longer criminalized causing, encouraging or inciting disharmony or feelings of hostility or ill will between different racial groups or persons belonging to different racial groups. He saw little difference between provoking hostility between different ethnic groups and incitement to racial hatred and strongly encouraged the State party to review the provisions of the Racial Discrimination Prohibition Amendment Act of 1998.

66. He wished to know whether racial segregation continued to exist in Namibia. Paragraph 146 of the report, which stated that Namibia did not have territorial jurisdiction on any other territory beyond her borders, offered little insight in that regard.

67. Paragraph 152 of the report implied that affirmative action measures constituted a derogation of the principle of non-discrimination, which revealed a misunderstanding of the concept. Such measures were applied to ensure the equality of rights, thus eliminating discrimination.

68. With regard to political rights, he asked whether the San and the Himba were represented in the National Assembly and regional government and, if so, in what percentages. He asked if and how those communities were consulted on matters that concerned them directly.

69. While land reform was an original way of redressing historical inequalities, progress was apparently slow and he would welcome information on future perspectives.

70. He requested additional socio-economic data disaggregated by ethnicity. He would also be interested to hear of cases where the Ombudsman had used his broad mandate and of the outcome of the relevant proceedings.

71. **Mr. Peter**, referring to the top-down approach apparently underlying the San Development Programme, asked to what extent the San's chosen way of life was taken into account and whether they were consulted. In the neighbouring Botswana, the San had taken legal action against the Government, and the country's highest court had granted them the right to return to their ancestral lands. He asked whether the State party had taken those developments into consideration when designing programmes targeting the San communities. There was also a potential conflict of interests among donors to the San Development Programme, who might have a vested interest in the San people abandoning their traditional way of life and lands in order to make room for tourism. To what extent had donors pressured the San into leaving their land?

72. The report provided much information about the situation of refugees and asylum-seekers and he wished to know why the State party had not acceded to the Convention Governing the Specific Aspects of Refugee Problems of the Organization of African Unity.

73. How had the desegregation of schools improved access to education? Given the persistent ethnicity-related gap in literacy rates, it would be useful to know whether any progress had been made.

74. The State party appeared to be concerned that foreign men might marry Namibian women for the convenience of getting a foothold to permanently reside in Namibia or acquire citizenship. He would welcome clarification about the legal situation of foreign women wishing to marry Namibian men and whether there might be discrimination in that area.

The meeting rose at 5.40 p.m.