



REPUBLIC OF NAMIBIA

OMBUDSMAN: NAMIBIA

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CONTRIBUTIONS FROM THE OMBUDSMAN, NAMIBIA TO IDENTIFY POSSIBLE GAPS IN THE PROTECTION OF THE HUMAN RIGHTS OF OLDER PERSONS AND HOW BEST TO ADDRESS THEM

Submission to the Office of the Human Rights Commission

Submitted December 2023

INTRODUCTION

Ombudsman: Namibia is established under Chapter 10 of the Namibian Constitution, and the enabling legislation which is the Ombudsman Act, Act No. 7 of 1990. Ombudsman: Namibia is a classical Ombudsman with addition mandates. The mandates are receiving and investigating complaints relating to maladministration, violation of human rights and fundamental freedoms, misappropriation of public monies and misuse of Government properties by public officials and the protection of the environment. The office received a status “A” accreditation from the Global Alliance of National Human Rights Institutions (GANHRI) in 2006 and retains its status “A” accreditation during the re-accreditation process in 2011. Its application for re-accreditation in November 2016 was deferred, and in November 2018 it was re-accredited.¹

This submission will emphasize the normative frameworks and practical implementation (some information might be general depends from the available information at hand) for the protection of the

¹ See: Website: www.ombudsmam.org.na

human rights of older persons in the identified areas of human rights in Namibia and how Namibia approach these issues.

a) Equality and non-discrimination:

Namibia is guided by the international instruments/human rights treaties of which Namibia has ratified most of the treaties that are of relevance to older persons and that emphasize the importance of promoting and protecting the rights of older persons. In the Namibia context, old persons fall within the ambit of Article 10 of the Namibian Constitution, in particular under subsection (1), which provides that, all persons shall be equal before the law. Furthermore under subsection (2), which prohibits discrimination on all grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. Age in this particular instance are not explicitly listed as prohibited ground of discrimination.

As provided for under article 25 (2) of the constitution” aggrieved persons who claim that a fundamental right or freedom guaranteed by this constitution has been infringed or threatened shall be entitled to approach a competent court to enforce such a right. This is also applicable for older persons may also approach the Ombudsman, who by virtue of his mandate can investigate such infringements of rights including discrimination complaints.

Article 95 of the Constitution of Namibia requires the State to actively promote and maintain the welfare of people, and to create equal opportunities. The Constitution exhorts the State to safeguard the dignity of people, create equal opportunities for women, protect children, support the unemployed and indigent, ensure decent work and provide regular pensions to the elderly.

The Social Protection Policy² is anchored on Article 95 of Namibia’s Constitution, which compels the Government to actively promote equal opportunity and the well-being of all citizens. Namibia’s long-term policy framework, Vision 2030, aims to create a high-income, industrialized, politically stable, harmonious and successful society with income equity and equitable opportunity. It specifies that individuals who are disadvantaged should be provided with social security that ensures a decent quality of life. Furthermore, the Policy is compliant with international, regional and national legal and regulatory frameworks – all of which emphasize the need to strengthen social protection systems to better respond to the risks and vulnerabilities that all people face throughout their life cycle, thereby increasing their contribution to societal and national development.

² Social Protection Policy-2021-2023 (Min.of Gender Equality, Poverty Eradication & Social Welfare).

b) Violence, neglect and abuse:

Namibia has no specific laws that specifically addresses violence against older persons, elder abuse or maltreatment of older persons. There are however, provisions in other legal frameworks that are inclusive of dealing with violence and abuse of older persons such as,

- ❖ Article 8 of the Namibian Constitution provides that the dignity of all persons shall be inviolable;
- ❖ Senior citizens remain neglected and there are domestically violated³ yet, there is little legal framework to protect them from domestic violence. The Combating of Domestic Violence Act,⁴ in its definition includes physical, sexual, economic, verbal emotional and psychological violence, intimidation and harassment. The Act caters for pensioners, as it provides that every person (over the age of 21, which includes older persons), who some reason is unable to make an application for a protection order in person, can through the use of a third party, ask for a protection order provided they give their written consent.⁵ In that way, the ageing citizens, who have difficulty accessing transport or who in many instances are physically unfit to reach the police or court facilities, can make use of third parties to enforce their rights. The Act has provisions that provide protection to complainants who lay criminal charges against their abusers; and
- ❖ The Criminal Procedure Act, ⁶also makes provision for procedures and related in criminal proceedings during the lodging of criminal matters and also subpoenaed as witness (es) to attend court proceedings. Because of the senior status and frailty, elderly persons need special protection and legal recognition. This is particularly important given the vulnerable position the elderly find themselves. ⁷Thus, as provided for in Section 191 (5), of the Criminal Procedure Act, “ *witness* ” shall include any person necessarily required to accompany any witness on account of his/her youth, old age or infirmity.

³ Media reports have been strongly supporting this reality. See for instance the following reports: Smith, E.2011. “Focus on abuse and neglect of elder people.” The Namibian Sun, dated 16 June 2011. See also Gaomas, S. 2006. Namibia: Old people suffer regular abuse. Available at <http://www.almotamar.net/en/1106.html> accessed 12 August 2012.

⁴ Act No.3 of 2003.

⁵ See section 4 of the Domestic Violence Act.

⁶ Act No. 51 of 1977.

⁷ Page 69-par.3.1.3: Baseline study report on human rights in Namibia.

c) Long term care and palliative care:

The Ministry of Health and Social Services with support from WHO held a National Consultation meeting on 15-17 November 2022, on the National Policy on the Rights, Protection and Care of Older Persons in Namibia to review and make recommendations.

It requires adaptations to the way societies are structured across all sectors within and across countries. It further emphasizes the impact of the environment on health and behaviour, and people's exposure to health risks, access to services, and opportunities that ageing brings. The meeting concluded that '*This policy is a crucial milestone in addressing the health and rights of older persons.*'

The draft policy has 9 strategic action areas:

1. Adapting and ensuring access to health systems for older persons
2. Facilitating care to older persons and developing long-term care systems
3. Investing in older persons' intergenerational roles
4. Addressing and eliminating the abuse of older persons
5. Ensuring adequate income security for older persons
6. Eliminating age-based discrimination and ensuring access to education and learning in later life
7. Ensuring access to adequate housing and the built infrastructure for older persons
8. Supporting older persons' active participation in political and governance processes
9. Fostering Africa centered research and training on ageing and later life.⁸

The nationwide consultations are finalized, and is now at the final stage to be submitted to Cabinet for debate and/or approval.

d) Autonomy and independence:

As provided for in the National Policy on Disability, the Government of Namibia must ensure that older persons with disabilities do not fall out of the society, but remain integrated and are given the rehabilitation and support to enable them to continue participating within their communities.

Under the various National development plans and Vision 2030, the policy seeks to fight poverty through health creation and growing of the economy in a sustainable and inclusive manner. It speaks to social protection for older persons and addresses key areas such as hunger, poverty and housing that will foster the full enjoyment by older persons of their rights.

e) Protection et securite sociales

We make reference to the National Policy on the Rights, Protection and Care of Older Persons in Namibia.

⁸ WHO/Regional office for Africa-<https://www.afro.who.int>.

We further also make reference to the Social Protection Policy that is anchored on Article 95 of Namibia's Constitution, which compels the Government to actively promote equal opportunity and the well-being of all citizens by adopting policies aimed at ensuring that senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities.

The Aged Persons Act (No.81 of 1967) makes reference to the protection and welfare of certain aged and debilitated persons. In particular, section 1 defines 'debilitated' *to mean* "that a person sixty years (60) and older by reason of old age or physical or mental defect or illness, unable to properly for his or her person or his or her interest...." Certainly, old age can lead to cause disability and, therefore, elderly people could be catered for under the provisions that deal with people living with disabilities because these two conditions can sometimes be clustered under the same pieces of legislation.⁹

In light of the above, The National Pensions Act,¹⁰ provides for national pensions to be paid to the aged, visually impaired and persons with disability, and to provide for matters incidental thereto.

The Social Security Act,¹¹ 1994 (No. 34 of 1994), provides for the establishment, constitution and powers, duties and functions of the Social Security Commission to provide for social security benefits.

f) Education, training, lifelong learning and capacity building:

We make reference to the National Policy on the Rights, Protection and Care of Older Persons in Namibia in particular with specific strategic actions of fostering Africa centered research and training on ageing and later life. Eliminating age-based discrimination and ensuring access to education and learning in later life.

g) Right to work and access to the Labour Market:

The right to work and access to the labour market for older persons is addressed in the international instruments, with principles such as non-discrimination, equal opportunities (right to work, is emphasized under the United Nations Principles for Older persons). Thus, the ICESCR Committee expressly addresses the economic, social and cultural rights of older persons in General Comment 6, in which the Committee calls upon States to:

⁹ Page 71: Baseline study report on human rights in Namibia.

¹⁰ Act.No.10 of 1992.

¹¹ Act.No.34 of 1994.

- Pay particular attention to older women as they have often not engaged in a remunerated activity entitling them to an old-age pension (par.20);
- Institute measures to prevent discrimination on grounds of age in employment and occupation (par.26).¹²

Article 23 of the Namibian Constitution makes provision for Affirmative Action. Women have been explicitly included in this provision. The Namibian Affirmative Action (Employment) Act¹³ recognizes three designated groups of people, namely racially disadvantaged persons, women and persons with disabilities. The Act does not cater explicitly for the elderly people, hence relinquishing their right to work in appropriate circumstances. During the conducting of the survey, it was found that most elderly persons were subsistence farmers.¹⁴ That having been said , there is currently not a comprehensive legislative measure in place that expressly provides for the rights of the elderly in Namibia.

h) Access to Justice:

Access to justice is guaranteed in the Namibian Constitution. Therefore any Namibian whose rights have been infringed can approach the Office of the Ombudsman for redress or can do it through the courts of Namibia.

The Directorate Legal Aid within the Ministry of Justice provides legal aid to indigent persons (including older persons).

i) Contributions of Older Persons to Sustainable Development:

We make reference to the National Policy on the Rights, Protection and Care of Older Persons in Namibia in particular with specific strategic actions of supporting older persons' active participation in political and governance processes (including Vision 2030- embark on that the people enjoy high standards of living, a good quality life and have access to quality education, health and other vital services).

j) Economic security:

We refer to the National Policy on the Rights, Protection and Care of Older Persons in Namibia to review and make recommendation as set out in the strategic objective actions.

i) Right to Health and Access to Health Services:

Apart from the existing National Health Policy and National Health Act¹⁵, that provides for a framework for a structured uniform health system, there was an outcry for a National Health Policy Framework that will empower all Namibians to actively participate in activities that promote good health and prevent ill health at the individual, family, and community levels.

As a result, the Government (Ministry of Health and Social Services) with the WHO have had national consultations during November 2022 for ensuring a policy framework for healthy ageing in Namibia,

¹² Page 69: Baseline study report on human rights in Namibia.

¹³ Act No. 29 of 1998.

¹⁴ Page 71: Baseline study report on human rights in Namibia.

¹⁵ Act.No.2 of 2015.

refer to as the National Policy on the Rights, Protection and Care of Older Persons in Namibia. It was emphasized by various presenters that the policy is crucial milestone in addressing the health and rights of older persons. The policy must boost active healthy ageing, ‘as Namibian society benefitted very much from the contributions, wisdom and guidance that older persons provided

There were also consultative meetings conducted during 2023, spearheaded by the Ministry of Health and Social Services to align the Namibian Health system with the Universal health Coverage (UHC) that aims to ensure all individuals have access to essential health services without suffering financial hardship.

I) Social inclusion, accessibility, infrastructures and habitat (transport, housing and access)

We refer to the National Policy on the Rights, Protection and Care of Older Persons in Namibia to review and make recommendation as set out in the strategic objective actions.

OPTIONS ON HOW BEST TO ADDRESS THE GAPS:

1. Please state how your Government/organization has engaged with international and regional human rights mechanism (for example: UPR, treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons.

a) The Government (Ministry of Health and Social Services) with support from WHO held a National Consultation meeting on 15-17 November 2022, on the National Policy on the Rights, Protection and Care of Older Persons in Namibia to review and make recommendations.

It requires adaptations to the way societies are structured across all sectors within and across countries. It further emphasizes the impact of the environment on health and behaviour, and people’s exposure to health risks, access to services, and opportunities that ageing brings. The meeting concluded that ‘*This policy is a crucial milestone in addressing the health and rights of older persons.*’

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8. Supporting older persons’ active participation in political and governance processes

9. Fostering Africa centered research and training on ageing and later life.¹⁶

b) The Centre for Human Rights, Faculty of Law, University of Pretoria conducted a high-level advocacy mission during April 2023 to Namibia for the ratification of African Union human rights treaties, of which the Protocol to the African Charter on Human and Peoples 'Rights on the Rights of Older Persons-2016 was part of the deliberations. The purpose of the meeting emphasized the role of ratifying the Protocol on the rights of older persons including other African human rights treaties.¹⁷

2. Have those engagement resulted in positive impact in strengthening the protection of the human rights of older persons? Please elaborate.

a) The national wide consultations are finalized, and is now at the final stage to be submitted to Cabinet for debate and/or approval.

b) As Namibia is a state party to the African Charter, the Government (Ministry of Justice) emphasized that Namibia has shown leadership at the international level by ratifying several treaties, and pledged to take the leadership role on the ratification of the regional treaties.

3. What other options can be considered to strengthen the protection of human rights of older persons? Please elaborate.

a) When targeting elderly persons, messages should be illustrative and translated in local languages;

b) Roll out agricultural extensions services to sensitise elderly subsistence farmers about the importance of crop diversification and other farming techniques;

c) Strengthen initiatives of providing support to subsistence farmers such as tractors, seed, manure;

d) The introduced income generating activities as provided for in the strategic action areas of the National Policy on the Rights, Protection and Care of Older Persons in Namibia is welcomed and commented;

e) Human rights organisations should enhance to target elderly persons so as to educate them about the rights and responsibilities;

f) The Office of the Ombudsman should design a specific human rights programme targeting elderly persons.¹⁸

g) To encourage the Ministry of Health and Social Services to fast track the implementation of the National Policy; and

h) To encourage the Government to ratify the Protocol as pledged without any further delays.

4. If applicable, what is your assessment on the protection of the human rights of older persons according to regional and international instruments?

¹⁶ WHO/Regional office for Africa-<https://www.afro.who.int>.

¹⁷ (/images/centrenews/2023/files/Combo_roadmaps_6_4_2023.pdf).

¹⁸ Page 73: Baseline study report on human rights in Namibia.