

# **The State of Indigenous Human Rights in Namibia**

*Prepared for Committee on Economic, Social,  
and Cultural Rights (CESCR)*

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## **I. Reporting Organization**

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: [www.cs.org](http://www.cs.org).

## **II. Summary of Indigenous Rights Violations**

*“In Namibia, alienation and marginalisation are the main causes of Indigenous peoples’ problems. Indigenous peoples occupy no significant economic or social positions and remain largely excluded from national structures. Large numbers of San communities do not have access to land. Educational facilities remain generally inadequate and sometimes inaccessible to the San and Himba communities. Participation in national affairs and matters relating to the determination of their own development presents serious challenges.”<sup>1</sup>*

Indigenous people in Namibia make up about 8% of the total population and reside in various regions throughout the country, including the Kalahari Desert, the Kunene region, and the southern part of Namibia. Having been dispossessed of their traditional lands, many Indigenous people of Namibia suffer from a lack of land rights and do not have access to lands that allow them to sustain their livelihood and traditional way of life. Furthermore, they are not recognized in the country’s constitution and have little political representation, besides the appointment of traditional authorities, which has proven to be a slow and problematic process. There has been some intervention by the government and non-governmental agencies, including the San Development Programme and several resettlement initiatives to address the discrimination and social and economic issues faced by Indigenous groups. Even still, Indigenous people face higher rates of health problems, such as HIV/AIDS and infant mortality, because of their remoteness from health services. Similarly, they have limited access to education, especially kinds that are culturally-appropriate and that embrace traditional customs. To bring about the advancement of Indigenous people, the government must start by acknowledging their place as citizens of Namibia, restoring land and land rights to them, increasing access to decision making, and supporting programs that promote Indigenous social well-being, with participation from Indigenous people themselves.

According to the Namibia 2011 census, Indigenous people, who include the San, the Nama, the Himba, Zemba, and Twa, constitute about 8% of the country’s population of 2,044,147. The San include several groups, each with their own language, customs, and histories. Traditionally, they occupy the Kalahari Desert as hunters and gatherers and are thought to have been in the Namibian region for some 2,000 years. Forced out of their lands, they are now some of the

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<sup>1</sup> Country Report by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of Indigenous peoples: Namibia. (2009). Pg. 41.

poorest and most marginalized people in the country. The Himba, who number about 20,000, live throughout the Kunene region in the North-West, where they subsist on livestock and some agricultural activity. The Zemba and Twa also reside in the North-Western region of Namibia while the Nama, numbering about 80,000, can be found throughout the Southern part of the country as herders and pastoralists.<sup>2</sup>

While various efforts have been made, the Indigenous people of Namibia have not seen many of the benefits promised since the country's independence from South Africa in 1990. Namibia has signed several of the international agreements upholding human and Indigenous rights, including the African Charter on Human and People's Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and voted for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. Furthermore, the country's very own Constitution forbids discrimination and encourages the state to help the advancement of marginalized and disadvantaged communities.<sup>3</sup> In line with these documents, the Namibian government has created programs to combat the discrimination and create a "just and equitable society".<sup>4</sup> One major program is the San Development Programme, which, since its establishment in 2005, has become the Division of San Development headed by the Deputy Prime Minister. Despite these advancements, Indigenous rights' are still not directly addressed in the Constitution. Furthermore, the country has not ratified the ILO Convention No. 169. The Indigenous people of Namibia remain impoverished, discriminated against, and forced to live in remote regions of the country.

### **Securing Land Rights and Free, Prior and Informed Consent (Articles 1, 2, 5)**

Indigenous people in Namibia depend on land and its natural resources to survive as well as to maintain and celebrate their own culture and traditions. Therefore, it is essential that they have proper land rights, titling, and greater access to land.<sup>5</sup> Unfortunately, many Indigenous groups in Namibia have been dispossessed of their traditional lands, which were then converted into natural parks or extractive industry, such as logging, mining, or oil extraction. In November of 2012, the Himba and Zemba marched to the city of Okanguati to protest the construction of a dam in the Baynes Mountains, for which they were not consulted.<sup>6</sup> This is reminiscent of the plans to build the Epupa dam in the 1990's that were finally dropped after much protest by Indigenous groups. Both the Himba and Zemba led protests against the Baynes Mountain dam again in 2014 with added indignation over the recent attempts to bribe Chief Kapika for his approval of the dam. The construction of the dam as well as potential flooding will cause the

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<sup>2</sup> Country Report by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of Indigenous peoples: Namibia. (2009). p. 6-7.

<sup>3</sup> *The Constitution of The Republic of Namibia*. Art. 23, Sec. 2.

<sup>4</sup> Part of Namibia's Vision 2030 goals

<sup>5</sup> African Commission on Human and People's Rights (2006). *Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission's work on Indigenous peoples in Africa*. p. 17.

<sup>6</sup> See the Declaration by the Most Directly Affected Indigenous Peoples Against the Orokawe Dam in the Baynes Mountains.

Indigenous groups to lose their sacred lands and graveyards, forcing evictions. This violation ignores Article 20, 21, and 22 of the African Charter, which give all people the right to existence and self-determination, the right to their natural resources, and the right to their economic, social and cultural development.<sup>7</sup>

Instead, many Indigenous people live on communal lands established and owned by the government. However, only one communal land has been provided exclusively for the San people, which mean many San are living on communal lands with other ethnic groups, where they lack representation and face greater marginalization at the hands of these more powerful groups. The government has recently tried to rectify this loss of land through a group resettlement model. Indigenous people living on communal lands, for example, are able to create conservancies, which gives them control over their natural resources. However, laws regarding conservancies and communal lands often conflict and are difficult to understand. The San people have been unable to enforce their land rights, as shown by the illegal fencing taking place in the N̄a Jaqna Conservancy since 2003 and the intrusion of Herero cattle herders on Nyae Nyae Conservancy land as of 2013. Illegal fences are being put up daily by commercial cattle farmers, which means the San have more trouble harvesting wild foods and face even greater food insecurity.<sup>8</sup> Both of these problems make it difficult for San people to survive on their already limited resources.<sup>9</sup> Furthermore, current efforts by the government to purchase land for distribution among Indigenous people have been slow and insufficient, which means the San people are often forced to become squatters near commercial farms and urban areas.<sup>10</sup> For instance, members of the Oshivelo San community have been waiting for 20 years for the resettlement land offered to them by the government after being evicted from Etosha National Park.<sup>11</sup>

### **Self-Determination and Political Representation (Articles 1, 2)**

Although the Constitution of Namibia outlaws ethnic discrimination, it does not uphold any rights specifically for Indigenous Peoples. Furthermore, the government deals with legislation over “marginalized communities” rather than explicitly addressing issues regarding Indigenous groups.<sup>12</sup> However, the right to self-determination and representation for Indigenous people is upheld in several international agreements, including the ICCPR, the ICESR, and the United Nations Declaration on the Rights of Indigenous. To address the lack of self-determination and

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<sup>7</sup> Organization of African Unity. (1981). African (Banjul) Charter on Human and People’s Rights art. 20, 21, and 22

<sup>8</sup> Cupido, Delme. “Land grabs threaten San in Namibia”. *Open Society Initiative for Southern Africa*. (7 June 2013).

<sup>9</sup> See <http://www.insight.com.na/the-failure-of-law-and-politics/>

<sup>10</sup> Country Report by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of Indigenous peoples: Namibia. (2009). p. 13-14

<sup>11</sup> “Report of the Special Rapporteur on the rights of Indigenous peoples, James Anaya.” United Nations General Assembly. (25 June 2013). p.10.

<sup>12</sup> The International Work Group for Indigenous Affairs. *The Indigenous World*. “Namibia”. Ed. Cæcilie Mikkelsen. (2013). p. 432.

political representation of Indigenous groups, a Namibian San Council<sup>13</sup> was created in 2006 with help from NGOs and a Namibian Indigenous Platform is currently being established. The Namibian government has also begun to recognize traditional authorities (TAs).<sup>14</sup> However, TAs must be approved by the state and are often forced to support government policies, which undermines their autonomy. Furthermore, the state has only recognized five San TAs, which means that some San people are being represented by a TA from another community. Of the five TAs, two have died and have yet to be replaced.

The Zemba, who cannot elect their own leaders and representatives, applied to have their chief officially recognized as their leader by the state in 1997. Although their application was approved, while they were preparing the ceremony of inauguration, police forces violently disrupted the ceremony. During the disruption, Indigenous people were harmed, kept hostage, and stripped of their land. Their approval revoked, they are now under the rule of the Uukolokadhi Traditional Authority and, “have none of the rights that are outlined in the UN Declaration”.<sup>15</sup> The Himba offer similar grievances in their Declaration by the Traditional Leaders of Kaokoland in Namibia, lamenting that, as of 2012, only three TAs have been recognized by the government, even though thirty-three TAs were recognized by a High Court case in 2001.<sup>16</sup>

### **Education (Articles 13, 14) and Health (Article 12)**

The lack of quality health care is another major issue concerning the Indigenous People of Namibia. Indigenous groups have little access to health services and those that exist are of poor quality or too costly. More than 80% of San live over an hour away from health services. Many San reported that people often died while traveling these long distances to seek help.<sup>17</sup>

Combined with the poverty and discrimination faced by these groups, this has contributed to high rates of mortality as well as a rise in incidences of HIV/AIDS, tuberculosis, and pneumonia, especially among the San communities. The San people are, “the only ethnic group in Namibia whose health status has declined since independence.”<sup>18</sup>

Research has shown that the Indigenous people of Namibia, particularly the San people, also suffer from low levels of education.<sup>19</sup> This can be attributed to the discrimination and teasing

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<sup>13</sup> The Namibian San Council is made up of 14 representatives of San communities. While they have had several conferences, the San Council is still gaining force and often suffers from insufficient funds.

<sup>14</sup> Traditional Authorities Act. (2000).

<sup>15</sup> *Declaration of the Zemba People of Namibia*. (2012). See [http://earthpeoples.org/DECLARATION\\_ZEMBA.pdf](http://earthpeoples.org/DECLARATION_ZEMBA.pdf)

<sup>16</sup> *Declaration by the Traditional Himba Leaders of Kaokoland in Namibia*. (2012).

<sup>17</sup> “Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in Namibia”. *Human Rights Council*. (25 June 2013).

<sup>18</sup> Country Report by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of Indigenous peoples: Namibia. (2009). p. 34-35.

<sup>19</sup> *Ibid*, 6.

Indigenous students face and the lack of culturally-appropriate schools. The Himba and Zemba people of Kaokoland have protested in their 2012 declarations that their children cannot wear their traditional dress and hairstyles, which forces many to drop out of school as they cannot afford the expensive British-style school uniforms.<sup>20</sup> Moreover, schools are taught primarily in English, which makes it harder for Indigenous students to keep up. The San Development Program has sought to address this problem by offering scholarships and establishing learning programs. The use of mobile schools was also effective in providing easier access to schools, but conditions of these schools have deteriorated since the Namibian government has taken over responsibility of the program. There still remains a discrepancy in education levels between Indigenous people and other members of society. The San have suffered from poor access to education and have the lowest literacy rate at 23%, compared to the national average of 66%. School enrollment for the San is about 60% lower than the national average, with 7% enrolled in junior secondary school and less than 1% enrolled in senior secondary school.<sup>21</sup>

### **III. Concluding Observations**

The Committee has not yet issued any concluding observations about Indigenous Peoples' rights in Namibia

### **IV. Namibian Report**

The state party report does not adequately address Indigenous rights nor answer questions around securing Indigenous Peoples' rights to lands, resources, and services.

### **V. Legal Framework**

*ICESCR Article 1(1)*

*1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

*ICESCR Article 15(1)(a)*

*1. The States Parties to the present Covenant recognize the right of everyone:*

*(a) To take part in cultural life;*

### **VI. The CESCR Committee General Comments**

General Comment 21: *Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)[1]:*

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<sup>20</sup> Declaration By The Traditional Leaders of Kaokoland in Namibia. Opuwo, Namibia. (20 January 2012).

<sup>21</sup> "Report of the Special Rapporteur on the rights of Indigenous peoples, James Anaya." United Nations General Assembly. (25 June 2013). p. 16.

36. States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by Indigenous peoples. The strong communal dimension of Indigenous peoples' cultural life is indispensable to their existence, well being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. States parties must therefore take measures to recognize and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories.

37. Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts. States parties should respect the principle of free, prior and informed consent of Indigenous peoples in all matters covered by their specific rights.

## **VII. Other UN Body Recommendations**

### **First Cycle UPR Recommendations**

Several recommendations were made to Namibia regarding Indigenous Peoples during the first cycle of the UPR in 2011, including the following:

- *“Continue its policy of promoting and protecting the rights of Indigenous peoples by consolidating it with further measures to ensure the full exercise of the rights of all components of Namibian society while respecting its traditions and identity.” (Morocco)*
- *“Increase efforts to reduce poverty and stimulate development of the most marginalized groups, particularly Indigenous communities, involving them in the decisions regarding their rights and interests.” (Mexico)*
- *“Take all necessary measures to eradicate discrimination against Indigenous peoples.” (France)*
- *“Formulate a white paper in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and that recommendations from the Committee on the Elimination of Racial Discrimination, the International Labour Organization (ILO) and the African Commission's Working Group on Indigenous Populations/Communities are taken into consideration in this process.” (Norway)*
- *“Strengthen measures to end discrimination, exclusion and marginalization of Indigenous groups and minorities, in particular the San people.” (Austria)*

While there has been progress in addressing these recommendations, Indigenous people of Namibia still suffer from the discrimination, poverty, and lack of rights mentioned above. For instance, the San people have a Human Development Index of .35 compared to the national average of .55 and the lowest average income. Furthermore, about 80% of San do not have title to lands. While a white paper has been written, as recommended by Norway, it has yet to be approved. Furthermore, given the recent protests by Indigenous groups, it is clear their wishes have not been respected and they have not been involved in decision-making at the national level. Therefore, the Namibian government should continue to use these recommendations to further improve the well-being of its Indigenous people.

## VIII. Questions

## IX. Recommendations:

Cultural Survival urges the Government of the Republic of Namibia to:

1. Ratify the ILO Convention No. 169, thus ensuring that the issues facing its country's Indigenous people are addressed.
2. Recognize the rights of Indigenous Peoples and minorities explicitly in the Namibian Constitution.
3. "Recognise and protect the rights of Indigenous people to own, develop, control and use their lands and territories".<sup>22</sup>
4. Work with Indigenous peoples on land titling of their traditional lands and provide more funding to the Ministry of Lands and Resettlement in order to continue purchasing land for the resettlement of Indigenous groups. Furthermore, the resettled groups should be lead and design the process and be provided with support during their rebuilding of their communities.
5. Continue with the San Development Program, meanwhile consulting Indigenous groups to ensure efforts are consistent with their cultures and needs. This should include addressing the obstacles, such as costs, discrimination, and distance, facing Indigenous children in attending school.
6. Continue and expand the recognition of traditional authorities to promote the representation of Indigenous groups at the local and national level.
7. Approve the White Paper on the Rights of Indigenous Peoples in Namibia written by the Office of the Ombudsman and address the issues addressed in the White Paper.
8. Implement the recommendations made by UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya in 2013 (A/HRC/24/41/Add.1).
9. Adopt a national action plan on its implementation to ensure Indigenous peoples' effective and politically meaningful participation in the decision-making process and equal representation in the governance of the country as provided under UNDRIP and ILO Convention 169.

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<sup>22</sup> Office of the United Nations High Commissioner for Human Rights. *General Recommendation No. 23: Indigenous Peoples*. (1997). CERD Concluding Recommendations



10. Implement the World Conference on Indigenous Peoples Outcome Document, beginning with drafting a National Plan of Action to achieve the ends of the Declaration.