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The cost of travel and subsistence for the journey was borne by Raoul Wallenberg Institute whose African section worked expeditiously to make available in good time the above requisites for travel. To the Institute and its Programme Officer for Africa, Ms. Susanne Malmstrom I am grateful.

The General Secretariat of the Organisation of African Unity gave immediate and positive response to my plea for facilitation of my mission. It informed the Foreign Ministries of Namibia and Botswana of my travel schedule as well as the personalities and organisations I would like to meet. Copies of the note verbale were sent to me; and I am grateful to the Secretariat in general and Mr. Ben Kioko, of the Legal Division in particular, whose promptitude in responding to my request played no small part in the success of my mission.

I was welcomed at Windhoek and Sir Seretse Khama Airport by Mr. Charles B. Josob and Ms. Tegbo Motshome Setloboko respectively. These officials of the Ministry of Foreign Affairs of their respective country led me to the officials and organisations I desired to meet. I am much obliged to the Governments of Namibia and Botswana for facilitating my entry into their countries and for putting no impediment in my way as regards whom I wanted to talk to or where I wanted to go. Their assistance in internal transportation is very much appreciated. To the already named officials and Ms. Daphne Nomsa Mlotshwa who, at a later stage in my mission shared Ms. Setloboko's schedule relating to me and other officials who were all helpful, I express my gratitude.

NAMIBIA

In my communication with the General Secretariat of the OAU, I had expressed the desire to meet the officials who follow: Minister of Foreign Affairs and Interior, Attorney-General, Chief Justice, Inspector General of Police or his equivalent, Dean of Faculty of Law as well as the head of a national body in charge of human rights. These officials, in my view, play key roles in the protection of human rights.

I had made separate arrangements to meet representatives of Non-Governmental Organisations. I am grateful to Mrs. Gwanes, Secretary-General of Namibian Women's Organisation who arranged a meeting with the main NGO in Namibia, Legal Assistance Centre.
A Schedule of Appointments awaiting me accommodated my concerns.

The Attorney-General was out of town during my visit. But I had useful discussion with Adv. V. Ya Toivo and one of her colleagues in the Office of the Attorney-General. A committee had been established by Government to fulfil the reporting obligation undertaken by the State in its ratification of international human rights instruments. An inter-ministerial body, the Committee draws upon personnel from the Ministries of Foreign Affairs, Home Affairs and Education and Culture as well as the Office of the President. Work had been completed on the Convention Against Torture and CEDAW, and the African Charter on Human And Peoples' Rights will be the next instrument to be addressed. I encouraged them in their effort and expressed the hope that Namibia's first report to the Commission would be ready before the 10th anniversary of the coming into effect of the Charter.

Status Of The Charter In Namibia Legal System

Constitutional Provision makes international instruments to which the State is a party part of the laws of Namibia. It would, therefore, seem that the provisions of the Charter are enforceable in the courts of Namibia. I was informed that the 2 cases, the titles of which could not be made readily available to me, had made references to the Charter. It was observed that Namibians are not generally a litigious people, the implication being that it was unlikely that there would be many cases which would find it necessary to rely on the Charter.

Women's Rights

Namibia had just taken the progressive step of passing Married Persons Equality Bill which gave capacity to married women to enter into contracts.

The human rights situation in Namibia was further illuminated through my meeting and discussion with Hon. Judge J. Strydom, Judge President of the High Court of Namibia.

In a very real sense, the enforcement and enjoyment of human rights in Namibia began only after its independence. But it must become a culture, and it takes time to achieve this goal. The impatience of the people for this end is, however, understandable. Minority rights have to be respected. The Chairman of Electoral Commission undertakes voters education. Right awareness campaign should be pursued.

The Courts in Namibia are independent. The Courts structure is briefly stated below. It consists of Lower and Superior Courts. Within the former are Magistrate and Regional courts. Magistrates have jurisdiction to sentence offenders to a maximum fine of 3,000 Namibian Dollars and 3 years imprisonment. At the
regional level, a court has jurisdiction to sentence an offender to a maximum term of ten years and a fine of 30,000 Namibian Dollars. High Court, and Supreme Court make up the Superior Courts. The High Court hears appeals and review from lower courts. The Supreme Court sits four times in a year, and hears between 16-20 cases a year, and has 3 judges.

The system of law in practice is Roman-Dutch law. In interpreting the Namibian Bill of Rights, the Courts can have resort to all jurisdictions. Without remembering the title of the case, the Judge President recalled that the Charter had been quoted before the Courts.

Namibian cases are reported in South African Law Reports, and it is still so. However Namibian Law Reports are being compiled. The death penalty has been abolished in Namibia. The Criminal Procedure is being reviewed to bring it into conformity with the Constitution. Criminality is becoming a problem as a result of the economic condition.

South African legislation which have not been specifically repealed by the Constitution continue to apply unless declared unconstitutional by the courts.

Ministry of Justice

Mr. U. Nujoma, Deputy Permanent Secretary at the Ministry of Justice granted me audience. A young country trying to present reports under international instruments is bound to have problems. Namibia is, however, building up its resource base for this task. Confirming what had been stated at the Attorney-General's Department, it was also noted that the report on the Torture Convention had been submitted to NGOs for their comments.

Curriculum for human rights education from the basic to tertiary levels is being developed at the University of Namibia Human Rights Documentation Centre. The Ministry liaise with NGOs and Women's Desk at the Office of the President to disseminate human rights ideas. Through radio and television programmes, Namibia Institute for Democracy also educate Namibians about their rights. Special classes are conducted for magistrates, prosecutors, officers of the prison, police and army at Ministry of Justice Training Centre.

By constitutional dictate, nobody can be held without bail for more than forty-eight hours.

NGOs

(i) Namibian National Women's Organisation was established in 1991 to bring together women of different political parties, and to serve as an advocacy and lobbying group on gender and women's issues in particular.
Working on Women and Health at the time of the visit, the Organisation has structures in all the 13 regions with a total membership of between 800 and 1000. It includes women in rural areas. A National Advisory Council consisting of 2 members from each region advises the National Executive Committee on problems in the regions. It organises Seminars and Workshop.

Inimical laws against women are coming under attack. In the North, under traditional law a widow is chased off land if she could not pay dues. While one traditional ruler ruled against this custom, another forced a widow to pay the dues. There was a hue and cry from women against the latter decision.

Law Reform and Development Commission has a Committee on Women and Law which is headed by Adv. Toivo of the Attorney-General's Department. Other Committees of the Commission are (i) Accessibility to Law and (ii) Customary Law. Under a Customary Law Project ascertainment of Customary Law is being undertaken. Customary law is applied in lower courts. Customary law marriages are not recognised for many purposes. Customary law is also a question of fact. From Ad. Gwanas, Secretary-General of the above organisation, Member of the Law Reform and Development Commission as well as Public Service Commission the following issues are the most pressing in women's rights: violence against women including domestic violence and absence of women on influence structure of the OAU. On the first issue, she should exclude domestic violence.

Adv. Gwanas, who is also the Secretary-General of Namibia National Women's Organisation, provided the above information on the organisation and I owe her a debt of gratitude.

ii) Legal Assistance Centre

This is the main NGO in human rights in Namibia and it is headed by a Director, Mr. Andrew Corbett. I had a meeting with the centre’s officials listed below: Mr. Bisey Uirab, Mr. Steve Katjiuwaitjio, Lyuita Gouradie in charge of Law Reports, Rosalinda Namises concerned with Legal Education and Tousy Namiseb of the Litigation Department.

There is a network of NGOs in the region which meets twice a year. The centre was founded in 1988 at the request of church leaders, student organisations and the Trade Union Congress which needed advice, especially in the northern part of Namibia. Labour disputes was a particular area where advice was needed. It was active during the struggle for independence. It also worked closely with the United Nations, identifying discriminatory laws and organising workshops on voter education.

Since independence, the Centre has been concentrating its efforts on the security forces, civic and community education. It has limited capacity to extend aid in litigation. The Namibia Law Reports are published by the Centre. Under its Juvenile
Justice Project attention is focused on diversion of the youth from criminal activities and gender issues. Detention with adults, assault in detention and bail are also addressed. Juveniles should be detained at special centres without adults. The centre also appears in court for Juveniles. The programme also has room for learning various skills. Very often the Centre consults with the family of the juvenile. Apology from the accused juvenile, reconciliation and withdrawal of charge result from the efforts of the Centre. Paralegal work among communities especially rural ones, and refer matters to the Centre in Windhoek.

As regards its relationship with government, the Centre contributed towards the Labour Act and National Land Conference. It also helped to draft children's Act. Similarly, it made a contribution to the CEDAW Report. In the case of violation of human rights by government, it sides with the victim, as when it was claimed that policemen could not express their views on television. The Parliament also summarises bills for Members of Parliament and others.

Other activities of the Centre include legal assistance to women in maintenance cases as well as in the area of detention of immigrants; holding seminars for senior police officers, lecturing at Justice Training Centre and preparation of manual for legal education and human rights training. A scholarship Programme encourages students to study law. Key dates such as African Children Day, and International Human Rights Day are observed by the Centre.

It was observed that a Rape Bill was under consideration; sentences and proof by the victim are some of the critical areas calling for amendment.

iii) National Society for Human Rights

The Executive Director, Phil Ya Nangolah complained of late invitation to the 13th Session of the Commission at Ouagadougou. I agreed to pass on their annual report to the Secretary of the Commission. The work of the society includes report on corruption and prison condition. There is a prison population of over 3,000. The judicial process, according to the report, is slower than previously. It was observed that poverty was increasing as a result of worsening social and economic conditions. Namibians are more aware of their rights than previously. The government operates a legal aid scheme, but it has limited resources.

The Director perceived the Labour Act as being in conflict with CEDAW because it does not provide for maternity leave with pay.
iv) Human Rights and Documentation Centre

The Centre is located in the Faculty of Law of the University of Namibia, at Windhoek. I had a meeting with Professor Dr. Manfred O. Hinz, Deputy Dean of the Faculty, Mr. R.A. Kaakunga, Coordinator of the centre and Mr. B.F. Bankie, Researcher/Lecturer.

Established three years ago, the Faculty awards the LL.B degree after 5 years. The Justice Training Centre is part of the Faculty which offers one year course before admission to practice law. The Documentation Centre is in effect a Research Institute aimed at the consolidation of the democratic process in the country through monitoring activities.

There was a complaint of late receipt of invitation to the 19th Session. They were eager to receive activity report of the Commission as well as other public documents of the Commission. A National Conference on Human Rights Awareness was being planned for the second part of the year.

As it began, the report on meetings in Namibia ends with brief accounts of meeting with officials of the Ministries of Foreign Affairs and Home Affairs. After outlining the mandate and work of the Commission, as I did at all the other meetings, to Mr. Mdali-Che Kamati, Deputy Permanent Secretary, Multilateral Policy Co-ordination and Mr. R.B. Karamata, Deputy Director, African Political and economic Institutions both of the Ministry of Foreign Affairs. I discussed with them the issues of State Reports and an invitation to hold a Session of the Commission in Namibia. No positive assurance was given in the latter case although it would be borne in mind while the former was receiving the serious attention of the appropriate officials as I had been made to understand in earlier discussions.

Ministry of Home Affairs

Mr. Jeremiah Nambinga, Deputy Minister of Home Affairs was at the head of officials with whom I discussed human rights issues pertaining to their Ministry. Also present at the meeting were the Inspector-General of Police, Mr. Lucas Hangula and other Senior Police Officers.

It was confirmed that detention without trial beyond 48 hours is unconstitutional, but there could be difficulties in the case of long distance to a court. Magistrates grant bail. Reasons for arrest must be explained to suspects, who are entitled to consult their lawyers. They are entitled to refuse to make a statement. The Police grant bail in minor offences while bail is determined by the Court in serious cases. Under the Police Act and Regulations cruel and degrading punishment is forbidden.
Changes in society account for the increase in criminality. About 528 persons were awaiting trial in 13 regions. The police are not getting soft on criminality: they act within the law, using no excessive force in arrest or on suspects.

There is progress. Magistrates are to be found in all the 13 regions. Prisoners are held in the regions where they are to be tried, contrary to what obtained before independence.

The IGP complained that while they receive adequate literature from the United Nations, nothing is forthcoming from either the Commission or the OAU. The Police will very much like to receive documents from the Commission in particular.

BOTSWANA

Ministry of Foreign Affairs

I raised the issue of Botswana's Report with Mr. Mpofu, Deputy Permanent Secretary, Ministry of Foreign Affairs, who promised to follow up the matter. I also took up with him the Communication I had been entrusted with by the Commission. Since this matter is confidential at this stage, I have prepared a separate report on it for members of the Commission.

Attorney-General's Chambers

I had discussion with Mr. Mapitse, Deputy Attorney-General in charge of Treaty Division of the above. The Communication referred to above was discussed further with him.

The traditions and culture of the people are responsible for the stability which Botswana has enjoyed since independence, he asserted. Traditionally they debated issues among themselves, holding very high freedom of expression. A wise-saying expresses this position:

"Let the evil speaker speak his mind."

A Chief was also called a "heap place" or refuse dump where everybody poured his "rubbish". Consequently, dissenting voices are tolerated.

International instruments should be incorporated into municipal law before it formed part of the latter. This had not been done before the Unity Dow Case. However, Citizenship Act was amended to comply with the decision of the Court of Appeal.

As regards the status of women, he was of the view that they were not discriminated against socially though they were legally. Married women's property is managed by the husband. A joint estate is also administered by the husband. At the lower level of the educational system, more female than male attend school.
Unity Dow

This celebrated lady was kind enough to drive down from her residence, a distance of about 30 kilometres, to meet and have a discussion with me at a very short notice. She saw a climate for change. A noticeable change had already occurred: the newspapers now carry articles on women. She confirmed the discrimination against married women in the area of property. Violence against women in the family situation is a problem.

It was confirmed that many more girls than boys enter schools. Even at the tertiary level, the difference is not big.

Unity Dow runs a legal aid, Counselling and education clinic mainly for women. Her organisation, Metlaetsile Women's Information Centre is challenging in Court the level of responsibility of the father of a child born out of wedlock. Under customary law he is expected to make a one-time payment usually of 4 cattle, and the legislation on the matter also fixes it at a very low amount of money.

Kgotta Meeting (village meeting) where all participate in the decision-making process has persisted to this day because

"The one who speaks bad words must speak, for even within bad words, good words will come out."

Whether there should be capital punishment has been discussed at this forum.

Law Department, University of Botswana

I had separate discussions with the Head of Department and 3 other Lecturers including Prof. Kwame Frimpong.

The African Charter on Human and Peoples' Rights has not been incorporated into domestic law. But generally the laws reflect the requirements under the Charter.

The Constitution did not specifically prohibit discrimination on the ground of sex.

There is no difference in wages of men and women doing work of the same value.

Customary law does not recognise legal personality of women.

I ended my visit to the University with a public lecture on The Charter and the Commission.
Ditshwaneho (NGO)

Church and community group make up this impressive NGO which has a very good documentation centre. I agreed to submit to our Secretariat their annual report. Some of its recent activities include a workshop on street children. It is also working actively in HIV/AIDS area. Their paralegals provide aid to communities in squatter areas. In Gaborone the advice they offer is mainly in maintenance cases. However, they do not extend assistance in litigation; a legal clinic at the University fulfils this need.

They are financed by Donors and Consultancy work.

My lecture at the University was partly hosted by this NGO.