



CONTRIBUTION TO THE REPORT OF THE SPECIAL RAPPORTEUR ON RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

1. Steps to ensure that access to citizenship and naturalization is granted on an equal basis without discrimination on grounds of race, colour, descent or national and ethnic origin :

The Namibian Constitution being the supreme law of the country, prohibits discrimination. Article 10 (1) thereof makes all persons equal before the law, and Article 10(2) prohibits discrimination on the grounds of sex, race, colour, ethnic origin, religion creed or social or economic status. All laws, including those pertaining to acquisition and deprivation of citizenship, must comply with the provisions of the Constitution.

The right to citizenship is one of the cornerstone entrenched in Article 4 of the Namibian Constitution. Subsequent to this provision, the Namibian government enacted enabling legislation to regulate the acquisition or loss of citizenship and immigration matters, such as:

- a) Namibian Citizenship Act, Act 14 of 1990
- b) Namibian Citizenship special conferment Act, Act 14 of 1991
- c) Namibian Citizenship (Second) Special Conferment Act, Act 6 of 2015
- d) Immigration Control Act, act 7 of 1993

The requirements for the acquisition of citizenship are set out in article 4 of the Namibian Constitution and further regulated by various Acts of Parliament. The requirements are of general application and all applicants for citizenship should meet those requirements; neither preferential treatment nor disqualification is made on grounds of race, colour, descent, national or ethnic origin.

2. Steps taken to remove barriers for the naturalisation of long-term or permanent residents belonging to ethnic and racial minorities or other groups, including people without nationality :

No barriers exist for acquisition of citizenship. The requirements to be met are those set out in the Namibian Constitution and the applicable legislation. There is a certain group of people who have been resident in Namibia for a long time but are unable to acquire citizenship in the normal course because they do not meet the constitutional and statutory requirements, e.g. Angolans who came between 1978 until 20 March 1990. Cabinet has approved that a Special Conferment Act be enacted to enable them to acquire citizenship. The draft law is currently with the Attorney- General for clearance. Note must be taken that their inability to acquire citizenship is not based on any discrimination but on their inability to meet statutory requirements that all other applicants are required to meet. The special treatment they are to receive is an exception to the law because we are aware that these persons are by fact (although not by law) permanently resident in Namibia.

3. Steps for the regularization of former citizens of predecessor States :

Namibia has hosted nationals of other countries for many years, since before independence, mainly Angolans and South Africans. When Namibia gained independence in 1990, provision was made for people who were then ordinarily resident in Namibia to acquire citizenship with minimal requirements. Article 4(4) of the Namibian Constitution provides:

“Citizenship by registration may be claimed by persons who are not Namibian citizens under sub-Articles (1), (2) or (3) hereof and who were ordinarily resident in Namibia at the date of independence, and had been so resident for a continuous period of not less than five (5) years prior to such date : provided that application for Namibian citizenship under this sub-Article is made within a period of (12) months from the date of independence, and prior to making such application, such persons renounce the citizenship of any other country of which they are citizens”.

This provision gave people an opportunity to voluntarily acquire Namibian citizenship. For those who opted not, or were unable, to acquire citizenship through the constitutional provision, the Government made efforts to integrate them into the Namibian society by granting them permanent residence status, although they do not meet the requirements for permanent residence permits set out in section 26 of the Immigration Control Act. By acquisition of permanent residence, a door was opened to enable them to acquire Namibian citizenship by naturalization later. An exercise of this nature is currently ongoing for a category of former Angolan refugees who have opted for local integration after the United Nations invocation of a cessation clause in 2012. Most of these refugees arrived in Namibia after independence following intensified armed conflict in Angola at that time.

4. Measures taken to ensure that provisions to strip individuals of their nationality comply with the states obligation to ensure the non-discriminatory enjoyment of the right to nationality :

Section 9 of the Namibian Citizenship Act provides for deprivation of citizenship. Sub-section 4 thereof provides for protection against statelessness as follows: The Minister shall not deprive a person of his or her citizenship by order made in terms of subsection (1)-

- (a) If, by reason of the order, the person would be rendered stateless; or
- (b) Unless the Minister is satisfied that it is not conducive to the public interest that the person should continue to be a Namibian citizen. The grounds listed under Section 9 of the Act are non- discriminatory on any basis. Should anyone feel aggrieved by a decision of the Minister to deprive him/her of the Namibian citizenship, Article 18 of the Namibian Constitution allows the aggrieved person to challenge the decision of any administrative official including the Minister.

5. Measures taken to prevent and reduce statelessness of persons belonging to racial, national and ethnic minorities :

Statelessness is generally prohibited by law by virtue of section 9(4) of the Namibian Citizenship Act. No consideration is made regarding one's race, nationality or ethnicity. Ministry of Home affairs and Immigration has embarked on a review of various legal instruments to ensure that any loopholes that may lead to statelessness are closed. This is also done when it comes to assessing their readiness to vis-à-vis the accession to any international and regional instruments aimed at preventing statelessness.

6. Laws and policies imposing restrictions on immigration on the basis of nationality

There are numerous laws and policies that exist in this regard. The applicable law is the Immigration Control Act, Act 7 of 1993. There are no immigration policies, administered by the Ministry, which provide for discriminatory or preferential treatment on the basis of nationality.

7. Safeguards designed to ensure that immigration laws, policies and practices do not discriminate in purpose or effect against certain groups of non-national :

Constitutional supremacy (Article 6(1) of the Namibian Constitution) safeguards that all policies and laws are to be compliant to the Constitution, failing which they would be declared unconstitutional. The Immigration Control Act also follows Constitutional Supremacy. Further, Article 18 of the Namibian Constitution provides for judicial review; this means decisions that may be discriminatory are reviewed by courts of competent jurisdiction. In addition, the Immigration Control Act establishes two statutory bodies, i.e. the Immigration tribunal (which decides on matters of immigration violations of the act and orders removal of persons from Namibia) and the

Immigration selection board (which considers applications for permanent residence permits and employment permits by foreign nationals wishing to take up permanent residence and employment in Namibia) these bodies are subject to the rule of law.