

Committee on the Application of Standards

Date: 20 May 2021

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply written information to the Committee

▶ Information on the application of ratified Conventions supplied by governments on the list of individual cases

Namibia (ratification: 2001)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The Government has provided the following written information.

In terms of the application of Article 1(1)(b) of the Convention on additional grounds, including HIV status, the Committee requested the Government to adopt specific measures to ensure that workers who are victims of discrimination on the basis of HIV status (actual or perceived) have effective access to legal remedies.

Namibia fully recognizes that the information requested is on a purely voluntary basis and should be concerned only with new developments.

The Government of Namibia is committed to eradicating HIV/AIDS as noted by the Committee of Expert in its Report that Namibia is the first country in Africa to have more than three-quarters of its HIV-affected population virally suppressed.

The Labour Act, Act 11 of 2007, provides for a Dispute Resolution Mechanism for all disputes concerning fundamental rights and protection, which include disputes over employment decisions based on the ground of HIV status. These legal remedies consist of either referring a dispute to the Labour Commissioner for arbitration or approaching the Labour Court for enforcement of alleged infringed rights, or protection or other appropriate relief. It is our belief that the current legal remedies are effective and accessible to victims of discrimination on the basis of HIV status (actual or perceived).

The Committee further requested information on the number of cases of discrimination based on HIV status and on their outcome.

In 2019, one complaint against the Namibian Defence Force (NDF) was received by the Office of the Ombudsman. The complainant alleges that the NDF refused to employ him on grounds of his HIV status. The complainant was contacted by the Office of the Ombudsman to provide further information. The information is yet to be submitted by the complainant. The investigation will commence once the information is submitted.

The Committee asks the Government, in the context of Articles 2 and 5 – Implementation of the national equality policy and affirmative action, to provide

detailed information on the concrete measures taken to implement the action planned in the National Human Rights Action Plan 2015–19, in particular the review of the legislative and regulatory framework, and information on any research undertaken, obstacles encountered and results achieved in this regard. It further asks the Government to indicate what follow-up it gave to the recommendations in the Office of the Ombudsman’s Special Report on Racism and Discrimination and the concrete steps taken to address such discrimination.

The following are the concrete measures taken to implement the National Human Rights Action Plan 2015–19:

- The Law Reform and Development Commission (LRDC) initiated a project on Obsolete Laws which resulted in the Repeal of Obsolete Law Act, 2018 (Act No. 21 of 2018). Some of the repealed laws were discriminatory in nature.
- The second leg of the project, which researches the existence of other obsolete and discriminatory laws, has been completed and the report was handed to the Minister of Justice for further action. The Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill has been circulated for comments and submissions by stakeholders, and a stakeholders’ consultative meeting is scheduled for 28 May 2021. The Bill repeals the Racial Discrimination Prohibition Act 1991 (Act No. 26 of 1991) and its amendments.

The information on any research undertaken is provided as follows:

- The Ombudsman researched the reasons why racism, racial and other forms of discrimination still persist after 27 years of Namibian independence, and made numerous recommendations in his Report on the National Inquiry into Racism, Racial Discrimination and Other Forms of Discrimination and Tribalism. The Report was submitted to the National Assembly in October 2017.
- Completed research, stakeholder consultations and the drafting of the White Paper on Indigenous Peoples’ Rights in Namibia. The White Paper is due for Cabinet approval and adoption by the National Assembly.
- The LRDC, in collaboration with the Department of Disability Affairs in the Office of the Vice-President, undertook to first conduct a critical analysis of the current National Disability Legal Framework. The LRDC will assist in the review of the outdated Disability Council Act of 2004 with its National Disability Policy of 1997 and the domestication of the Convention on the Rights of Persons with Disabilities.

With regard to designated groups, the Committee asks the Government to continue to: step up its efforts to promote access to training and employment opportunities for designated groups and review regularly the affirmative action measures to assess their relevance and impact and to provide information on any measures taken in this regard and the results achieved.

The Affirmative Action (Employment) Act 29 of 1998, which was amended by the Affirmative Action (Employment) Amendment Act 6 of 2007, has provisions requiring relevant employers to institute positive steps to further the employment of persons in designated groups. These measures may include training opportunities and giving preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce.

Section 17(3)(a) and (b) further empowers the Employment Equity Commission in this regard to determine whether a designated group is equitably represented in the various positions of employment offered by a relevant employer, to take into account, in addition to such other factors as it may determine:

- (a) the availability of suitably qualified persons in that designated group for such positions of employment; and
- (b) the availability of persons in designated groups who are able and willing, through appropriate training programmes, to acquire the necessary skills and qualifications for such positions of employment.

The above is the legislative framework on which the Commission relies on the issue of access to training and employment opportunities for designated groups.

The Government is requested to provide information on any follow-up given to the work of the Employment Equity Commission (EEC) related to the review of the Affirmative Action (Employment) Act, 1998, and on the activities of this Commission.

Amendments to the Act

The amendments had already been finalized and forwarded to the tripartite Labour Advisory Council (LAC), which in turn provided some inputs and returned the Act for their incorporation. The EEC established a Task Force to attend to the amendments and the final draft amendment Act of the Task Force was provided to the office of the Employment Equity Commissioner on 11 May 2021. The Office is now conducting a desk study to assess, possibly incorporate and align with international legislation and best practices relating to: (a) training and development of human resources; (b) expatriates and understudy skills transfer; and (c) equal pay for work of equal value.

Reduction of reporting threshold – Increasing relevant employers

In terms of section 20 of the Act and the regulations made thereunder, currently only those employers employing 25 and more employees are regarded as relevant employers and are covered by the Affirmative Action (Employment) Act. The current threshold was established in 2007, but since 1999 the threshold had been those employing 50 and more. The Commission is of the view that it is time to reduce the threshold further to cover more employers and corresponding employees, since the 2018 Namibia Labour Force Survey showed that the number of employers and employees covered is currently too low due to the threshold.

Activities of the Commission

The Commission revised its current 20-year-old standard report content and structure guidelines to place emphasis, inter alia, on access to training. The new guidelines and designed forms require reporting on qualifying as well as non-qualifying training and require employers to institute training measures, coupled with the necessary budgetary allocation for in-house training, bursaries and human resource planning, such as talent management, succession planning, promotions, etc.

Coupled with the newly adopted reporting format, a new review framework called the Integrated Review Scorecard (IRSC), was also developed. This is an internal tool to guide the review of affirmative action reports and plans submitted to the Commission. The Commission has, since its inception, been trying to realize its objects without any objective criteria that could enhance its efficiency and effectiveness in carrying out the

range of activities specified in section 4(a)-(f). The above led to a widespread perception that the Commission was issuing AA Compliance Certificates to undeserving relevant employers simply because they submitted AA reports – not because they were implementing affirmative action in the workplace. The above prompted the need to develop and implement an integrated review scorecard. The IRSC is intended to assist the Commission in determining the exact compliance effort each relevant employer is making in the process of implementing affirmative action in his/her/its workplace. Furthermore, the IRSC will assist the Commission in the process of categorizing relevant employers into various compliance categories which in turn can be used for various purposes, such as training; possible charges for non-compliance with the Affirmative Action (Employment) Act; the giving of awards; consideration for state contracts, etc.

The Government is asked once again to provide information on any legislative developments regarding the New Equitable Economic Empowerment Framework Bill 2015.

The Draft Bill is almost ready for Cabinet consideration before it is tabled in the National Assembly in the third or fourth quarter of the 2021–22 financial year.

The Technical Working Committee has been engaged in consultation and it is due to brief the Prime Minister on Monday, 24 May 2021 at 10 a.m. on progress, and also to obtain political direction, if necessary.