



Joint Submission to the UN OHCHR

Universal Periodic Review, 38th session: Republic of Namibia

UNREPRESENTED PEOPLES OF NAMIBIA

The *Unrepresented Peoples and Nations Organization* is an international membership-based organization established to empower the voices of unrepresented and marginalized peoples worldwide and to protect their fundamental human rights. The peoples represented within the UNPO membership are all united by one shared condition: they are denied equal representation in the institutions of national or international governance. As a consequence, their opportunity to participate on the national or international stage is limited, and they struggle to fully realize their rights to civil and political participation and to control their economic, social and cultural development.

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The *Captain's Council of the Rehoboth Basters* is the traditional leadership body of the Rehoboth Basters. The Rehoboth Basters are a mixed-race Afrikaans-speaking indigenous people living in and around the town of Rehoboth, located in central Namibia. The Captain's Council works for the restitution of the ancestral land of the Rehoboth Basters, fair treatment and the recognition of their indigenous status.

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The *Movement for the Survival of the River Races in Zambesia* (MOSURIRAZA) is a non-violent membership based organization advocating for the restitution, self determination and full independence of Zambesia. Its main objective is to empower the voices of the Zambesian people both nationally and internationally and raise public awareness of the history of Zambesia.

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I. Introduction

1. This report, jointly submitted by the Unrepresented Nations and Peoples Organization (UNPO), the Rehoboth Basters and the Movement for the Survival of the River Races in Zambesia, on the occasion of the 38th session of the Universal Periodic Review, draws attention to the violations against minority groups in the country. It specifically highlights the situation of the Rehoboth Basters and Zambesians.
2. This submission is not meant to be comprehensive but it will rather focus on the rights of the Basters and Zambesians that are most affected by Namibia's behavior and policies, namely: recognition, environmental degradation, isolation, culture, language, freedom of speech and political participation.

II. Outline of the Peoples of Namibia

3. Namibia in south-west Africa is one of the driest and most sparsely populated countries on Earth. It gained independence in 1990 and has been governed by the South West Africa People's Organization (SWAPO) ever since. According to the 2019 Revision of World Population Prospects, Namibia has a population of 2,448,301 people. Despite relatively good economic growth in recent years, Namibia's poverty and inequality levels are among the highest.
4. Today, Namibia has a multicultural population, with numerous ethnically distinct groups. The collection of ethnically disaggregated data is not permitted, so exact data on the diverse communities of Namibia are not published. However, there are numbers available on the languages spoken in the country, the largest being the following: Oshiwambo languages 49.7%, Nama/Damara 11%, Kavango languages 10.4%, Afrikaans 9.4%, Herero languages 9.2%, Zambezi languages 4.9%, English 2.3%, other African languages, 1.5%, other European languages 0.7%. The Owambo people are the largest group in the country, comprising about half of the total population.

a. Rehoboth Basters

5. The Rehoboth Basters¹ are a mixed-race Afrikaans-speaking indigenous people who live in and around the town of Rehoboth, located in central Namibia. The community is estimated to number 55,000 people, though there are no official statistics on the Baster population.
6. The Rehoboth Basters are descendants of the aboriginal Khoi-People of Southern Africa and European colonists. The first communities emerged in the Cape Colony at the end of the

¹ UNPO: <http://unpo.org/members/7881>

eighteenth century. As a consequence of the social and political structures of the time in South Africa, they were not accepted by their forbears and suffered from discrimination committed by the colonial regime. In 1870s, a group of Basters migrated to present-day Namibia and acquired the Rehoboth Territory. They developed their own legislation, called '*Paternal Laws*', and lived according to their culture, tradition, language and economy, which was closely tight to the land.

7. Under both German and South African colonial rule, the Rehoboth Basters managed to maintain some autonomy and enjoyed some recognition. However, the boundaries of their original area were reduced dramatically, causing strong protests and even violent confrontations.
8. On 21 March 1990, Namibia was granted its independence. The Basters' self-Government was then abolished and their traditional land and other properties were seized and claimed by the newly-formed government. These assets were registered in the name of the community and included fixed assets, breeding stock, schools, farmland, town lands, police houses and cash, among others. No compensation was paid as the *Article 16.2* of the Namibian Constitution² stipulates in such cases. The Basters did not receive any compensation for their loss, while other peoples were either granted reparation or their land back.
9. Furthermore, the Rehoboth area was divided in two parts and these parts were added to two larger constituencies Khomas and Hardap regions. This delimitation hinders the Basters' access to political representation in Parliament.
10. On 10 October 1992³ the Basters' Captain and the Peoples Assembly, the people's traditional leadership body, officially declared the Rehoboth Basters as Indigenous Peoples of Namibia. Nonetheless, as of today, they are not recognized by the Namibian Government.

b. Zambesians

11. The Zambesi people are very diverse and spread across a number of countries in Southern Africa (Namibia, Botswana and Zambia) between the north of the Kalahari Desert and south of the Zambezi River, yet lack a country to call their own. They have a unique culture and traditions based on their food and dances. Zambesians are known as the River Races since they live in riverain conditions. Zambesia is a nation full of rivers being the Zambezi river, the Kwando/Linyanti river and the Okavango river the largest.
12. Zambesia, formerly known as Sebitwane country, Makololo country and Sekeletu country⁴, was a nation that was established long before the British and the German protectorates were instituted in 1884 and 1885 respectively. However, after the colonial territories were divided

² Namibian Constitution: <https://laws.parliament.na/namibian-constitution/>

³ <http://rehobothbasters.org/news/241-who-are-the-rehoboth-basters-n>

⁴ <http://www.caprivivision.com/signing-boarder-treaty-botswana-namibia/>

and became independent states, the Zambesi peoples found themselves divided over a number of countries, and they are now fragmented, struggling to maintain their own culture. This has also led to its people being oppressed and being denied the opportunity to manage its own affairs including natural resources for the benefit of its people.

13. In present-day Namibia, Zambesia's claimed territory falls into the Caprivi Strip, which is currently split administratively between the regions of East Kavango and Zambezi. The Caprivi Strip was never part of the German Colony, as it was a British Sphere of Influence⁵. In 1890 the Germans and the British reached an agreement⁶ that allowed the Germans to operate and cross the Strip in order to have access to German East Africa through the Zambezi River. The Germans were granted permission to do business there, but not to take over the region.
14. Zambesians identify themselves within Namibia as indigenous peoples of Caprivi, although the State just recognizes them as Namibians from the Zambezi region.
15. Over 98,000⁷ people live in the Zambezi Region of Namibia, which is about four percent of Namibia's citizens. The population is mostly composed of subsistence farmers who make their living on the banks of the Zambezi, Kwando, Linyanti and Chobe Rivers. Kavango East, on the other hand, houses around 148.000 people. It is a region with significant agricultural potential due to the abundance of rain.
16. Most of these communities still live in rural areas far away from the capital city of Windhoek. They face challenges such as poverty, inadequate water and sanitation provisions, under-nutrition and general under-development.

III. Minorities and Indigenous recognition

17. Namibia's First Nations make up about 8% of the total population⁸ and reside in various regions throughout the country. While the Constitution of Namibia⁹, in its *Article 10.2*, prohibits discrimination on the grounds of ethnic or tribal affiliation, it does not specifically recognize the rights of indigenous peoples or minorities¹⁰, and there is no national legislation dealing directly with indigenous peoples. Some groups are regarded as *marginalized communities* such the the San, the Ovahimba, Ovazemba, Ovatjimba and Ovatie¹¹, but they are not categorized as indigenous.

⁵ <http://www.caprivivision.com/where-is-the-boundary-of-zambesia-country/>

⁶ https://ghdi.ghi-dc.org/sub_document.cfm?document_id=782

⁷ Inter-censal Demographic Survey: https://cms.my.na/assets/documents/NIDS_2016.pdf

⁸ Minority Rights: <https://minorityrights.org/country/namibia/>

⁹ Namibian Constitution: <https://laws.parliament.na/namibian-constitution/>

¹⁰ The Indigenous World 2020: http://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf

¹¹ OHCHR: https://www.ohchr.org/documents/Issues/IPeoples/SR/A.HRC.24.41_AUV.pdf

18. Many communities have been dispossessed of their traditional lands and, therefore, can't sustain their livelihood and ancestral way of life. There are, nevertheless, over 50 recognized Traditional Authorities, who are entrusted with the allocation of communal land and the formulation of the traditional group's customary laws. However, the competencies granted to them do not entail core competencies of the state, like tax collection or control over executive organs¹².
19. In recent years, Namibia has prepared a draft White Paper on the Rights of Indigenous Peoples¹³, which was considered by the government and community stakeholders in December 2019. However, neither the Rehoboth Basters nor the Zambesians, who identify themselves indigenous to Namibia, have been engaged in the process. The said paper, which is expected to be approved soon, commits to ensure indigenous participation in the political sphere as well as highlights the need to consult indigenous peoples regarding matters that concern them on the principles of free, prior and informed consent. Nevertheless, the Basters and the Zambesians have seen no improvements in this regard.
20. While various efforts have been made, the indigenous peoples of Namibia have not seen many of the benefits promised since the country's independence 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 Rights¹⁴, and voted for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. However, it has not ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169).
21. This lack of legal status leads to little to no political representation or protection, which generates serious challenges concerning the implementation and maintenance of economic, social and cultural rights. In this regard, the Rehoboth Baster community and the Zambesians are significantly affected, suffering from issues such the following:
 - a. **Isolation and discrimination**
22. The Caprivi Strip remained a rural area and its inhabitants live very far from the power. There's not even a single railway¹⁵ connecting its people to the capital city, which is the political and economic hub of the country. Caprivians try to survive by fishing, hunting and working the land, but the job creation is very weak and the public investments are scarce. Despite possessing a huge potential in the agricultural, tourism, transport and logistics sectors, the region is underdeveloped and poverty-stricken. According to the Poverty

¹² Geographical Research on War: <https://growup.ethz.ch/atlas/Namibia>

¹³ Draft White Paper: https://www.ombudsman.org.na/wp-content/uploads/2017/12/Draft_white_paper_IP_Rights.pdf

¹⁴ UN Database: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=120&Lang=EN

¹⁵ Railway Network: <https://www.transnamib.com.na/railway-network/>

Mapping Report launched in 2015 by the National Planning Commission (NPC), the poorest regions in the country are the rural northern regions of Kavango, Oshikoto, Zambezi, Kunene and Ohangwena with more than one third of the population in these areas being poor. On the National level, the World Bank¹⁶ estimates that 390,000 Namibians live under the international poverty line of US\$1.9/day and overall unemployment rate is at approximately 33.4 percent.

23. As everyone else in Namibia, the Basters are being disturbed by the constant droughts affecting the country, which have been going on for years. Namibia is one of the driest countries in Africa and lies between the Kalahari Desert to the East and the Namib Desert to the West. Lack of fresh water, food shortages and scarcity of grazing for the livestock are just some direct consequences of the droughts. In 2019, a N\$573 million package¹⁷ aimed at helping farmers and families was approved by the Government, which was supplemented by additional millions in donations from other countries¹⁸, individuals and stakeholders¹⁹. However, as of October 2020, the Rehoboth Basters have not received any economical help, as opposed to other recognized communities.

b. Business development, land disputes and environmental degradation

24. In 2019, Namibia Oriental Tobacco CC, a locally registered society owned by a multinational foreign company, was given approval to lease 10.000 hectares of land²⁰ to set a tobacco plantation in Zambesia solely for export. The parcel is located outside Katima Mulilo, the capital of the Zambezi Region, and it is communal land within the jurisdiction of the Mafwe Traditional Authority. The project was strongly criticized²¹ and opposed on all public platforms. Local residents argue that the parcel should be used to grow food, since the region has suitable fertile soils and suffers from widespread poverty and hunger. The decision has also health, ecological and environmental repercussions, being biodiversity loss, soil erosion and water pollution the main concerns. Moreover, the plantation is in contravention with Article 17 and 18 of WHO Framework Convention on Tobacco Control (WHO-FCTC)²² which Namibia acceded to in February 2006.
25. When Namibia became an independent state most of the lands in possession of the Basters were seized and the traditional body of the Rehoboth Basters, the Captain's Council, was no longer acknowledged. In 2003, the Council applied for recognition as a Traditional Authority, but the lack of communal land, which was confiscated, made the application

¹⁶ Worldbank: <https://www.worldbank.org/en/country/namibia/overview>

¹⁷ <https://reliefweb.int/report/namibia/n573-million-drought-war-chest-announced>

¹⁸ <https://www.namibian.com.na/191667/archive-read/Egypt-donates-mahangu-for-drought-relief>

¹⁹ <https://reliefweb.int/report/namibia/huawei-donates-n300-000-drought-relief>

²⁰ <https://neweralive.na/posts/cabinet-approves-zambezi-tobacco-plantation>

²¹ <https://www.namibian.com.na/189733/archive-read/Tobacco-plant-approval-draws-criticism>

²² <https://atca-africa.org/en/namibia-tobacco-plantation-against-un-framework-convention-on-tobacco-control>

unsuccessful. In the past, the Basters used to allocate residential plots to their young people when they turned 18 years old. The process has stopped, since the community has no land nor is recognized, which has led to overcrowded houses and poverty. In April 1999, considering the 1992 'Rukoro Report', the Namibian Cabinet re-approved the provision of 2.500 residential plots for the Baster community and 3.000 for other groups living in the Rehoboth town. Additionally, in the same year, the Ministry of Regional, Local Government and Housing proposed the implementation of an '*Erven Committee*' representing all stakeholders to allocate the plots fairly and without discrimination, in which the Basters, legally, were supposed to be part of. For the last 22 years, the community have requested and lobbied to the town hall for the implementation of the said provisions and the said committee, without any success. On the 17th August 2020 the Rehoboth Town Council finally accepted to sit the committee for the first time and three members were accepted for the Basters. However, on the 30th September 2020, during an ordinary council meeting, the community realized that a few days before 386 names of beneficiaries were approved by an '*Erven Committee*' in which the Basters were not invited to, which contravenes the law. The situation even worsened when the Rehoboth Basters discovered the existence of beneficiaries who were not entitled to receive plots, causing dismay and frustration in the community. So far, the Basters have received less than 500 residential plots out of the 2.500 initially established, as opposed to other groups who have been granted 5.000 instead of 3.000.

26. Last September 2020, a foreign company applied and received permission to undertake exploration activities²³ in and around Rehoboth with the aim of identifying new mining prospects. Among other things, the activities will involve the clearance of forests and the abstraction of groundwater in some areas claimed as part of the Baster's collective indigenous land as well as on private farms. Besides serious concerns over the loss of biodiversity and water pollution, the community affirms they were never consulted before the exploratory license was issued. Depending on their findings during the exploratory period and, if successful, a mining license will be issued to resume mining operations. The explorations are set to affect Farm Zandputs, which is located West of Rehoboth and is still registered in the name of the Baster Community although expropriated by the government; Farm Uitdraai, located West of Rehoboth, which has become a patrimony of special significance for the community since it was used as a prisoner-of-war camp during the Baster German war in 1915; and the Acacia Forest, which is being deforested by the explorations, causing loss of vegetation.
27. On the outskirts of Rehoboth town there is a Namibian Defense Force military base. The Rehobot Basters feel intimidated by its presence and they have reported incidents affecting the community. For example, on 18 December 2018 members of the Rehoboth Shooters Club, a club connected to the Basters, realized that the Namibian Defense Force had tried to

²³ <https://eccenvironmental.com/wp-content/uploads/2020/09/ECC-90-302-NTS-05-B2.pdf>

steal their property²⁴ in order to expand the said military base. The club had been lawfully granted the land by the local council in 2004²⁵. The military personnel changed the locks and warned that the site was now off limits to the public as it was a military zone. When the owners of the club approached the local council, no help was given and their attempt to gain assistance from the police was equally unsuccessful. The club then filed an urgent application in the High Court against the minister of defense, the Namibian Defense Force and the Rehoboth Town Council. A month after the army illegally occupied the private shooting club, the military received an eviction notice and the range was handed back²⁶. The community is afraid more attempts to steal their land could happen again in the future.

c. Cultural and Language violations

28. Although international treaties, including the ICCPR, that are signed by Namibia contain several articles that prohibit discrimination on the basis of language, the Basters are not allowed to use Afrikaans in the official communication with the administration. Some Basters, especially the elders, are not fluent in English, therefore they can't communicate well with the authorities. In 2000, the UNHRC ruled²⁷ that this is in violation with the rights of the Rehoboth Basters. Moreover, in the 2011 UPR the Republic of Namibia accepted a recommendation from Germany which encouraged the African nation ‘*to take effective measures to enhance the access to public services concerning persons who do not speak the official language*’. The UNPO also raised the issue in the 2016 submission²⁸ for the consideration of the Universal Periodic Review of the Republic of Namibia. Nevertheless, no significant improvements have been made in this regard aside from occasional translations. English is Namibia’s official language, but only 2% of households use it as their main tongue. The largest language in the country is Oshiwambo (49%), although Afrikaans still functions as the *lingua franca*²⁹.
29. Since independence, most of the traditional symbols of the Rehoboth Basters have been taken or destroyed. One example is the official residence of the Baster's Captain, the leader of the community, which was expropriated and given to the Ministry of Education, Sport and Culture as offices. In 2003, in response to several complaints, the Namibian Government instructed the aforementioned ministry to transfer the property back to the Basters. After the notice, the house was vacated, albeit the hand over never took place. Numerous requests to the Rehoboth Town Council to issue a clearance certificate were met with insults and derogatory references. Furthermore, the Basters discovered that the property tax had been

²⁴ <https://www.namibiansun.com/news/army-takes-over-private-shooting-range2019-01-09>

²⁵ <https://africanlii.org/article/20190110/local-shooting-club-targets-namibian-defence-force>

²⁶ <https://www.namibiansun.com/news/army-hands-back-rehoboth-shooting-range2019-01-21>

²⁷ Zandberg J.: Rehoboth Griqua Atlas, 2nd Edition

²⁸ UNPO: https://www.upr-info.org/sites/default/files/document/namibia/session_24_-_january_2016/unpo_upr24_nam_e_main.pdf

²⁹ UNICEF: https://www.unicef.org/namibia/overview_13584.html

transferred, without changing the ownership, which goes against the law. It created debt and compounded interest. In recent years, vandalism increased and the residence was even torched in 2017. It is quite disheartening and distressing for the Basters to witness what was once an emblem and anchor of their self-rule in such state of degradation. On 12 August 2020 the Rehoboth Basters sent another letter to the Government, without any answer as yet.

IV. Freedom of speech and political participation

30. Namibia is a multiparty democracy although the South West Africa People's Organization (SWAPO) has been in power since the country gained independence on 21 March 1990. Protections for political rights and civil liberties are generally robust, scoring 77 out of 100 in the Freedom House 2020 assessment³⁰. Also, the Republic of Namibia is Africa's best ranked country in the Reporters Without Borders World Press Freedom Index³¹. However, some minority groups such as the Zambesians find their freedoms disproportionately limited under national unity and security concerns.
31. Zambesians are forced to hold online clandestine gatherings, since they are not allowed to have meetings nor demonstrations to discuss political matters regarding self-determination. The Namibian Constitution³² guarantees all persons in Namibia '*freedom of speech and expression*' and '*freedom to assemble peaceably and without arms*'. However, *Article 21.2* of the said Constitution also states that the fundamental freedoms can be subject to reasonable restrictions imposed in the name of national security, sovereignty, national integrity, public order, decency or morality. This is being used to limit Zambesians' freedom of expression when it comes to share their political views with the public and express their desire to choose freely their own political status.
32. On the 28th October 2019 the Zambezi Region police stopped a planned demonstration by members of the United Democratic Party (UDP)³³, which advocates for the independence of the Caprivi Strip. The party was outlawed in 2006 as it was seen the political wing of the Caprivi Liberation Army. Regional police commissioner Karel Theron stated the following during a media briefing: '*Zambezi region is a part of Namibia and there is nothing else to discuss. Therefore, we will not allow them to demonstrate today or tomorrow because there is no Caprivi strip, there's only Namibia*'.
33. Similarly, on 8th July 2018 a public meeting organized by the Caprivi Concerned Group, another pro-independence movement, was disrupted by the police and six leaders were

³⁰ Freedom House: <https://freedomhouse.org/countries/freedom-world/scores>

³¹ RSF: <https://rsf.org/en/namibia>

³² Namibian Constitution: <https://laws.parliament.na/namibian-constitution/>

³³ <https://www.namibian.com.na/194804/archive-read/Police-stop-UDP-demonstration>

arrested³⁴. They were detained at Liselo village, some 10 kilometers outside Katima Mulilo, after the police allegedly received information that a meeting was meant to discuss the secession of the Zambezi region from Namibia. The group appeared shortly after in court on charges of sedition and incitement to commit public violence³⁵. Bail was denied to them although they were released four days after.

34. In December 2015, Namibia's High Court delivered judgment on the so-called Caprivi Treason Trial and most of the initially accused were acquitted, after a decade behind bars. During the 2016 UPR, Austria asked Namibia to provide adequate compensation for the absolved, but the said recommendation was noted. In this regard, in May 2020, Richwell Kulisesa Mahupelo³⁶, one of the many affected, lost a lawsuit in which he sued the government for N\$15,3 million. Despite having spent 13 years in jail before being found not guilty, the Supreme Court dismissed his claim for constitutional damages.
35. The trial is the longest and largest in the history of Namibia³⁷ and dates back to 1999, when 132 men from the Caprivi Strip were arrested for the uprising led by the Caprivi Liberation Army. They were charged with high treason, sedition and murder, among other things. In 2013, forty-three (43) were discharged; in 2015 thirty-five were acquitted and thirty (30) convicted; and 24 died while in custody. The trial is not over yet, since there are still appeals to be examined.

V. Recommendations

In light of the above observations, the UNPO, the Rehoboth Basters and the MOSURIRAZA would like to recommend the Republic of Namibia to:

1. *Ensure indigenous participation in the political sphere and consult the will of local populations when development projects are proposed, in conformity with the White Paper on the Rights of Indigenous People.*
2. *Recognize the traditional lands of indigenous peoples and minorities, including that of the Rehoboth Basters.*
3. *Make amendments in its national Constitution and laws to ensure the protection of the rights of indigenous peoples and minorities, and to ensure that the Afrikaans language will be recognized as an official language, apart from English.*
4. *Sign and ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).*

³⁴ <https://namibiadailynews.info/caprivi-concerned-group-members-arrested-for-alleged-secessionist-activities/>

³⁵ <https://www.namibian.com.na/179346/archive-read/Caprivi-Concerned-Group-in-court-for-alleged-secessionist-activities>

³⁶ <https://www.namibian.com.na/201040/archive-read/Treason-trial-damages-claim-fails>

³⁷ <https://www.namibian.com.na/index.php?page=archive-read&id=145533>

5. *Take steps to guarantee that indigenous peoples and minorities freedom of speech and political rights are in accordance with the International Covenant on Civil and Political Rights (UCCPR), accessed by Namibia 1994.*
6. *Provide adequate compensation for the Zambesians acquitted who had spent long periods in remand detention during the so-called Caprivi Treason Trial.*
7. *Protect minorities from land grabbing practices that deprive them from their own means of subsistence and ensure that economic development programs are not detrimental to the environment.*
8. *Guarantee a fair allocation of land plots to all society groups and develop a better infrastructure to tackle isolation, poverty and underdevelopment.*