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## **Namibia's Compliance with the U.N. Convention Against Torture: LGBTI Rights**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

**Legal Assistance Centre  
MPower Community Trust  
Namibian Gays and Lesbian Movement  
TULINAM  
and  
Wings to Transcend Namibia**

for the 59th Session of the Committee Against Torture  
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**The Advocates for Human Rights** (The Advocates, United States) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates collaborates with partner organization in numerous countries to document and advocate for the rights of LGBTI individuals. The Advocates also provides LGBTI partner organizations with training and technical assistance, engages in public education and awareness-raising efforts, and represents LGBTI asylum seekers in the United States of America.

**Legal Assistance Centre** (LAC, Namibia) is a public interest law centre founded in 1988 that collectively strives to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia. The LAC currently has four major units: (1) The Social Justice Project; (2) the Gender, Research and Advocacy Project and (3) the Land, Environment and Development Project. The LAC is based in Windhoek.

**MPower Community Trust** (Namibia). MPower MSM Community care came to life in the midst of 2014 at the coastal town of Walvis Bay. Our main concern is the general health and human rights advocacy for men having sex with men (MSM), gay men, bisexual men, transgender and the male commercial sex worker as stigma and homophobia are contributing factors to HIV/AIDS within the target population. MPower provides a comprehensive package of health and human rights services, key components of which include: empowering peer-led outreach, community-based services, care and support in safe spaces, provision of condoms and lubricant, STI and HIV testing and treatment, clinical care and antiretroviral treatment, circumcision, interventions to address gender-based violence, legal assistance, and training in health & human rights.

The **Namibian Gays and Lesbian Movement** (NGLM, Namibia) acts as a call center for LGBTI & MSM youth and we focus on the following services: Counseling services; We provide advice on different services available, for example we refer the LGBTI & MSM community to the appropriate services needed after counseling; Provide health education on safe sex practices; Arrange educational and informative seminars on gender identity and self discovery; Assist LGBTI & MSM youth on how to deal with Gender Based violence in relationships; and Give education to the community that being Gay is not a Mental Health disorder.

**TULINAM** (Namibia) is a faith-based NGO that was created out of the need to sustain important work done until 2013 by Inclusive and Affirming Ministries (IAM) and concerned LGBTI individuals in Namibia with faith leaders and communities. Our purpose is to strengthen and support lesbian, gay, bi-sexual and intersex (LGBTI) individuals, allies and sympathetic clergy to understand and confront religious fundamentalism. To create safe spaces for dialogue to empower sexual minorities, faith communities and allies to engage with each other and recognise and claim the human rights of us all. We believe that TULINAM can enhance Namibian society to embrace diversity in all its forms, thereby eradicating social injustices and contributing to a fully democratic society. TULINAM works with organisations already specialising in this field, as well as organisations that need support in dealing with homophobia and discrimination within faith communities. We will also focus strongly on developing LGBTI's and allies to become change agents that understand the issues at hand and can confidently reach out to and dialogue with faith leaders and communities. We also aim to share our skills, experiences and ideas with other organisations in Africa and the world.

**Wings To Transcend Namibia** (WTTN, Namibia) is a Transgender rights based organisation that was formed in October 2015 as a voice for the transgender community in Namibia to further lobby and advocate for the legal gender recognition, non-discriminatory and non-stigmatizing health care and public /private service provision and the amount of Transphobic and gender insensitivity in the country bordered around respect for human dignity and Freedom of Expression. WTTN is still in the process to be registered as a trust.

## EXECUTIVE SUMMARY

1. Namibia fails to uphold its treaty obligations under the Convention Against Torture in laws and practices related to its treatment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. LGBTI Namibians continue to experience targeted discrimination and violence, both at the hands of State and non-State actors. The State party has not taken sufficient action to prevent, investigate and protect these individuals from torture and cruel, inhuman, or degrading treatment and punishment.
2. Police officers routinely violate the human rights of LGBT individuals by arbitrarily arresting them or subjecting them to physical violence. Criminalization of homosexual conduct enables these violations. Namibia should repeal the law criminalizing homosexual conduct. Police training and accountability measures are also recommended.
3. The State party fails to prevent violence and ill-treatment against LGBTI persons committed by non-State actors. LGBTI persons who do go to the police report experiencing additional violations, including being ridiculed, treated in a degrading and insensitive manner, and asked inappropriate questions. Survivors have little faith in the criminal justice system.
4. The problems with Namibia's detention system are compounded for LGBTI individuals, who suffer additional human rights violations while in detention. Transgender women are often placed in male jail cells, putting them at high risk of sexual assault. Understaffing of medical personnel means medical services are inadequate. Appropriate foods are not always available or provided, causing harm to individuals with HIV and AIDS. The State party has continued to deny access to condoms in prisons for fear of promoting "immoral practices" like sodomy.

### **Namibia fails to uphold its obligations under the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment**

5. As a State party to the Convention Against Torture, Namibia has an obligation to ensure that no person – including LGBTI individuals – are subjected to torture or to cruel, inhuman or degrading treatment or punishment. This duty extends to prohibiting, preventing, investigating, and providing redress for torture and ill-treatment, including by making such acts offenses under domestic criminal law.<sup>1</sup> A State may violate the Convention Against Torture both by directly committing, instigating, inciting or encouraging such acts, or by acquiescing or failing to take steps to deal with such acts by private or public actors.<sup>2</sup>
6. The Committee against Torture has stated that the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States should ensure the protection of members of these – including those discriminated against on the basis of sexual orientation or transgender identity - by fully prosecuting and punishing all acts of violence and abuse against these

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<sup>1</sup> United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter referred to as "CAT"*) 1984, Arts. 1, 2, 4(1), 10, 12, 13, 14 and 16. See also Committee Against Torture, *General Comment No. 2*, (24 January 2008), U.N. Doc. CAT/C/GC/2.

<sup>2</sup> Committee Against Torture, *General Comment No. 2*, (24 January 2008), U.N. Doc. CAT/C/GC/2, ¶ 15-19.

individuals and ensuring implementation of other positive measures of prevention and protection.<sup>3</sup>

7. Further, the Committee Against Torture has stated that States parties shall ensure that, access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of sexual orientation or gender identity.<sup>4</sup> States parties should also ensure that everybody, in particular members of groups made vulnerable, including LGBT individuals, must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.<sup>5</sup>

## I. Legal and Constitutional Framework

8. The State party acknowledges in its second periodic report to the Committee Against Torture that the Convention Against Torture is part of Namibian domestic laws and directly enforceable by virtue of Article 144 of the Namibian Constitution.<sup>6</sup> The Namibian High Court has confirmed the direct applicability of public international law and international agreements in Namibia.<sup>7</sup>
9. As the State party notes in its second periodic report, the crime of torture is not specifically recognized as a statutory offense in Namibia. Instead, offenses involving acts of torture are currently punished as Assault with intent to cause Grievous Bodily Harm (GBH).<sup>8</sup>
10. The State party also acknowledges in its second periodic report that “Article 8 (2) (b) of the Constitution which protects human dignity may be read in conjunction with the right to equality and non-discrimination enshrined in Article 10 of the Namibian constitution since discrimination also violates human dignity.”<sup>9</sup> The Namibian Constitution, however, does NOT include sexual orientation among the enumerated classes in article 10 (2) to be guaranteed equality and freedom from discrimination.<sup>10</sup> Further, there is no protection for discrimination based on sexual orientation in the workplace (Act. No. 11 of 2007).<sup>11</sup>
11. While homosexuality itself is not illegal in Namibia, Namibian law still officially criminalizes sexual acts between consenting adult men including “unnatural sexual offenses”

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<sup>3</sup> Committee Against Torture, *General Comment No. 2*, (24 January 2008), U.N. Doc. CAT/C/GC/2, ¶ 21.

<sup>4</sup> Committee Against Torture, *General Comment No. 3*, (19 November 2012), U.N. Doc. CAT/C/GC/3, ¶ 32.

<sup>5</sup> Committee Against Torture, *General Comment No. 2*, (24 January 2008), U.N. Doc. CAT/C/GC/2, ¶ 39.

<sup>6</sup> Committee against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention under the optional reporting procedure: Namibia*, (Nov. 25, 2015), U.N. Doc. CAT/C/NAM/2, ¶ 8.

<sup>7</sup> *Government of the Republic of Namibia v Mwilima and Other Accused* 2002 NR 235(SC) at 260H.

<sup>8</sup> Committee against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention under the optional reporting procedure: Namibia*, (Nov. 25, 2015), U.N. Doc. CAT/C/NAM/2, ¶ 6.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/268/37/PDF/G1526837.pdf?OpenElement>

<sup>9</sup> Committee against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention under the optional reporting procedure: Namibia*, (Nov. 25, 2015), U.N. Doc. CAT/C/NAM/2, at ¶ 29.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/268/37/PDF/G1526837.pdf?OpenElement>

<sup>10</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, (2016), 38.

<sup>11</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015), 19.

<http://www.state.gov/documents/organization/252923.pdf> ; U.N. Human Rights Committee, *Concluding Observations on the second report of Namibia*, (Apr. 22, 2016), U.N. Doc. CCPR/C/NAM/CO/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/084/97/PDF/G1608497.pdf?OpenElement>

and “sodomy”, which is defined as intentional anal sex between men.<sup>12</sup> Namibia’s Combating of Rape Act defines rape as including a wide range of sexual acts in circumstances that involve force or coercion, so the crimes of sodomy and unnatural sexual offences are now relevant only to sexual acts between consenting adult men.<sup>13</sup> Further, the Namibian Criminal Procedure Act authorizes warrantless arrest and use of deadly force in cases of sodomy.<sup>14</sup> Immigrants convicted of sodomy are prohibited from entering or remaining in Namibia, and a permanent resident may lose permanent resident status if convicted of sodomy.<sup>15</sup>

12. “Even though these crimes are seldom if ever applied in practice, their existence has a negative impact on the LGBTI community and contributes to discrimination against that community.”<sup>16</sup>
13. The Combating of Domestic Violence Act 4 of 2003 provides for protection orders in domestic relationships but not in the case of violence between same sex partners.<sup>17</sup> Further, Namibian law does not recognize same-sex marriage or partnership.<sup>18</sup> As a result, same-sex couples are not able to jointly adopt children in Namibia.<sup>19</sup>
14. Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have recently expressed concern that Namibian law does not explicitly prohibit discrimination on the basis of sexual orientation.<sup>20</sup> The Human Rights Committee recommended that Namibia “adopt legislation prohibiting discrimination based on sexual orientation... and adopt hate crime legislation punishing homophobic and transphobic violence and vigorously enforce it.”<sup>21</sup> The Committee on Economic, Social and Cultural Rights recommended Namibia “abrogate all discriminatory legal provisions and ... decriminalize sexual relations between consenting individuals of the same sex.”<sup>22</sup>

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<sup>12</sup>U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2013), 19, <http://www.state.gov/documents/organization/252923.pdf> ; Amnesty International, *Makin Love a Crime*, (2013); *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 129.

<sup>13</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, February 2016, at page 7.

<sup>14</sup> *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, at 129

<sup>15</sup> Immigration Control Act 7 of 1993 [sections 7-10 and Schedule 1, sections 26, 39-50]

<sup>16</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, February 2016, at page 7.

<sup>17</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, February 2016, at page 13. See also U.N. Human Rights Committee, *Concluding Observations on the second report of Namibia*, (Apr. 22, 2016), U.N. Doc. CCPR/C/NAM/CO/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/084/97/PDF/G1608497.pdf?OpenElement>

<sup>18</sup> Marriage Act 25 of 1961.

<sup>19</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 134.

<sup>20</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Namibia*, (March 23, 2016), E/C.12/NAM/CO/1, ¶ 21. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/062/16/PDF/G1606216.pdf?OpenElement>

<sup>21</sup> UN Human Rights Committee, *UN Human Rights Committee: Concluding observations on the second report of Namibia*, (April 22, 2016), CCPR/C/NAM/CO/2, ¶ 10b. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/084/97/PDF/G1608497.pdf?OpenElement>

<sup>22</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Namibia*, (March 23, 2016), E/C.12/NAM/CO/1, ¶ 22c. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/062/16/PDF/G1606216.pdf?OpenElement>.

15. The Namibian government, however, has indicated it does not intend to repeal the sodomy law.<sup>23</sup> Namibia also rejected the 2011 UPR recommendations to decriminalize consensual sexual acts between persons of the same sex including a recommendation to enact a provision prohibiting discrimination based on sexual orientation and gender identity.<sup>24</sup> As recently as June 30, 2016, Namibia abstained from a UN Human Rights Council vote to appoint an independent expert on protection against violence and discrimination based on sexual orientation and gender identity.<sup>25</sup>

## **II. LGBTI Persons are Subjected to Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Namibia**

16. While the State party report does not include information torture and cruel, inhuman or degrading treatment or punishment of LGBTI persons in Namibia, continued criminalization of consensual same-sex conduct leads to stigmatization, violence, harassment, blackmail and discrimination by both State and non-State actors.

17. **LGBTI individuals report high rates of violence, harassment and ill-treatment at the hands of police officers and other State actors.** LGBTI individuals face significant discrimination and violence in their encounters with the Namibian criminal justice system, from arrest to pre-trial detention throughout post-conviction detention. A 2009 study found that 21 percent of men who have sex with men (MSM) in Namibia had been beaten by a police officer or government agent, and 21 percent had experienced blackmail or extortion.<sup>26</sup> The Human Rights Committee recently noted its concern reported cases of violence and harassment against LGBTI individuals by members of the police.<sup>27</sup>

18. **Authorities fail in their obligation to prevent and investigate violence, harassment and ill-treatment of LGBTI individuals.** A 2008 study found that 40 percent of gay men had experienced a human rights abuse related to their sexuality.<sup>28</sup> Lesbians dressed in a “masculine” manner, transgender and gender-non-conforming individuals are vulnerable to harassment and discrimination.<sup>29</sup> Transgender persons working as sex workers report having

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<sup>23</sup> Government of Namibia, *Replies of Namibia to the list of issues in relation to the second periodic report of Namibia*, (Dec. 15, 2015), U.N. Doc. CCPR/C/NAM/Q/2/Add.1, ¶50. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/282/18/PDF/G1528218.pdf?OpenElement>

<sup>24</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 134.

<sup>25</sup> Theresia Tjihenua, *Africa: Namibia Abstains From UN Gay Rights Vote*, All Africa, July 11, 2016, <http://allafrica.com/stories/201607110635.html>.

<sup>26</sup> African Commission on Human and Peoples’ Rights, *Report on Human Rights Issues for LGBTI Persons and Sex Workers in Namibia*, 2016.

<sup>27</sup> U.N. Human Rights Committee, *Concluding Observations on the second report of Namibia*, (Apr. 22, 2016), U.N. Doc. CCPR/C/NAM/CO/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/084/97/PDF/G1608497.pdf?OpenElement>

<sup>28</sup> HIV and AIDS Unit, *HIV prevalence among men who have sex with men in Windhoek, Namibia*, by Scholastika N. Iipinge, (Windhoek: University of Namibia, 2008) 14.

<sup>29</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 130.

been forced to strip naked in public,<sup>30</sup> as well as in custody, in order to “verify their gender”.<sup>31</sup>

19. In 2014, a man was beaten to death in Gobabis because he was suspected of being gay,<sup>32</sup> and in 2013 seven men severely beat a transgender woman in an Oshivambo community in the north of Namibia.<sup>33</sup> In January 2016, a man was charged with a double murder of two lesbian women in the Windhoek region.<sup>34</sup>
20. Lesbians also report threats of rape from men seeking to “cure” them of their sexual orientation, and police often fail to prosecute or investigate such claims.<sup>35</sup> While the prevalence of “corrective” rape in Namibia is unknown due to underreporting, some cases have been reported, including a September 2014 case in Goreangab.<sup>36</sup> **Systems actors fail to investigate and prosecute cases of violence and ill-treatment of LGBTI persons.** While human rights abuses against LGBTI persons in Namibia are likely underreported, LGBTI persons who do go to the police report experiencing additional violations, including being ridiculed, treated in a degrading and insensitive manner, and asked inappropriate questions.<sup>37</sup> For example, one transgender woman reported that she went to the police because she had been beaten and forcibly expelled from her home. Instead of taking her statement, the police officer asked her questions about “whether she was male or female” and why she was wearing a dress.<sup>38</sup>
21. Degrading treatment and ineffective investigation and prosecution “contributes to underreporting as survivors have little faith in the criminal justice system and are afraid to report their cases.”<sup>39</sup>

### **III. LGBTI Individuals Are Subjected to Torture and Cruel, Inhuman or Degrading Treatment or Punishment While Detained**

22. Under Namibian law, authorities must arraign arrested individuals within 48 hours of detention, but this requirement was not always satisfied.<sup>40</sup> Individuals may be held in custody beyond the 48 hours if it is “not reasonably possible” to bring that individual to a

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<sup>30</sup> Open Society Initiative for Southern Africa, *Rights No Rescue, A Report on Female, Male, and Trans Sex Workers’ Human Rights in Botswana, Namibia, and South Africa* (2009), 40.

<sup>31</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 130.

<sup>32</sup> “Gay killer remains in custody,” *New Era*, 24 October 2014.

<sup>33</sup> US Department of State, *Namibia 2013 Human Rights Report*, (Washington D.C, 2013). [www.state.gov/documents/organization/220354.pdf](http://www.state.gov/documents/organization/220354.pdf)

<sup>34</sup> Tjiroze, Gabby, “Homophobic murders,” *Informante* (Jan. 14, 2016), available at <http://www.informante.web.na/homophobic-murders.17178>

<sup>35</sup> Immigration and Refugee Board of Canada, *Namibia: Treatment of sexual minorities by society and government authorities; recourse and protection available to sexual minorities who have been subject to ill-treatment*, (Ottawa, Canada: Research Directorate, Immigration and Refugee Board, 2009-2010), NAM104147.E. <http://irb-cirs.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454117>

<sup>36</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 130. Namibian Sun, *Raped Because She’s a Lesbian*, 17 September 2014.

<sup>37</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 131.

<sup>38</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 131.

magistrate judge.<sup>41</sup> Due to procedural issues, limited availability of qualified court officials and legal aid assistance, and slow police investigations, accused individuals are sometimes held in pretrial detention for years. As of October 2014, more than 3,500 prisoners awaited trial in Namibian holding cells.<sup>42</sup> Some individuals have been in pretrial detention for up to 15 years.<sup>43</sup> The substantial delay between arrest and trial has eroded the constitutional right to a fair trial.<sup>44</sup>

23. Pretrial detention conditions are often deplorable. Sanitation poses a serious problem. Tuberculosis is prevalent and access to health care inadequate.<sup>45</sup> While Namibian law prohibits intermingling juvenile offenders with adults, police in rural areas occasionally detain them together due to a lack of juvenile pretrial detention facilities.<sup>46</sup>
24. Namibia's prisons are often overcrowded, leading to unhealthy and dangerous conditions of detention. From April 2013 to March 2014, for example, the nation's prisons held an average of 4,136 prisoners in prisons designed to house 3,987 prisoners.<sup>47</sup> Prison overcrowding is unevenly dispersed, with prisons in the Kavango West and Omusati regions holding 1.8 and 2.4 times the prison's holding capacity respectively.<sup>48</sup>
25. **The problems with Namibia's detention system are compounded for LGBTI individuals, who suffer additional human rights violations while in detention.** Transgender women are often placed in male jail cells, putting them at high risk of sexual assault.<sup>49</sup> Transgender sex workers in detention are often "systematically submitted to violence by being locked in jail with men".<sup>50</sup>

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<sup>39</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 131.

<sup>40</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015) 5.

<http://www.state.gov/documents/organization/252923.pdf>

<sup>41</sup> U.N. Human Rights Committee, *Concluding Observations on the second report of Namibia*, (Apr. 22, 2016), U.N.

Doc. CCPR/C/NAM/CO/2, [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/084/97/PDF/G1608497.pdf?OpenElement)

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<sup>42</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015) 5-6.

<http://www.state.gov/documents/organization/252923.pdf>

<sup>43</sup> U.N. Human Rights Committee, *Concluding Observations on the second report of Namibia*, (Apr. 22, 2016), U.N.

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<sup>44</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015) 5-6.

<http://www.state.gov/documents/organization/252923.pdf>

<sup>45</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015) 3.

<http://www.state.gov/documents/organization/252923.pdf>

<sup>46</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015) 3.

<http://www.state.gov/documents/organization/252923.pdf>

<sup>47</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015) 3.

<http://www.state.gov/documents/organization/252923.pdf>

<sup>48</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington D.C, 2015) 3.

<http://www.state.gov/documents/organization/252923.pdf>

<sup>49</sup> ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, 133.

<sup>50</sup> Open Society Initiative for Southern Africa, *Rights No Rescue, A Report on Female, Male, and Trans Sex Workers' Human Rights in Botswana, Namibia, and South Africa*, (2009), 40; *The Namibian*, A Night with Transgender Sex Workers in Windhoek, (2014).

<http://www.namibian.com.na/index.php?id=121547&page=archive-read>.

26. The State party reports that inmates at correctional facilities have access to medical services including HIV/AIDS services.<sup>51</sup> Civil society sources, however, report that medical personnel are understaffed in the correctional services, resulting in medical assistance not being consistently available within the facilities on a 24 hour basis.<sup>52</sup>
27. The State party reports that all inmates in Namibian detention facilities receive three meals a day, while those with lifestyle diseases including HIV and AIDS receive special diet as stipulated in the Correctional Services Menu.<sup>53</sup> “A court commissioned report prepared by the Legal Assistance Centre in 2011<sup>54</sup> on standards within the facilities indicated that while official menus and diets are balanced and reviewed, the reality is that the foods are not always available or provided. This is challenging in particular when certain foods are required for medical conditions and can have a detrimental effect on the response to HIV/AIDS.”<sup>55</sup>
28. The State party reports that, while no corresponding HIV surveillance studies were conducted in correctional facilities, the national HIV prevalence rate in Namibia was 19.9% in 2006 and 17.8% in 2009.<sup>56</sup> In spite of the high national HIV prevalence rate, Namibian prisons have only limited programs designed to prevent HIV transmission.<sup>57</sup> Further, the State party has continued to deny access to condoms in prisons for fear of promoting “immoral practices” like sodomy.<sup>58</sup> Anecdotal evidence suggests that inmates use plastic bags to protect themselves instead.<sup>59</sup>

## V. Suggested Recommendations for the Government of Namibia

29. The Government of Namibia should:

- abolish the common law crime of sodomy, which is relevant only to consensual sex between adult men and is seldom if ever applied in practice;
- guarantee equality and freedom from discrimination for all by ensuring that discrimination and hate speech against LGBTI persons is fully covered in law reforms

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<sup>51</sup>Committee against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention under the optional reporting procedure: Namibia*, (Nov. 25, 2015), U.N. Doc. CAT/C/NAM/2, ¶ 117.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/268/37/PDF/G1526837.pdf?OpenElement>

<sup>52</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, (2016), 23.

<sup>53</sup> Committee against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention under the optional reporting procedure: Namibia*, (Nov. 25, 2015), U.N. Doc. CAT/C/NAM/2, ¶ 119.

<sup>54</sup> S Ganeb v Ministry of Safety and Security and One other – case number A160/2011.

<sup>55</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, (2016), 23.

<sup>56</sup> Committee against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention under the optional reporting procedure: Namibia*, (Nov. 25, 2015), U.N. Doc. CAT/C/NAM/2, ¶ 116.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/268/37/PDF/G1526837.pdf?OpenElement>

<sup>57</sup> U.S. Dept. of State, *Namibia 2015 Human Rights Report*, (Washington DC, 2015), 3.

<http://www.state.gov/documents/organization/252923.pdf> .

<sup>58</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, (2015), 11.

<sup>59</sup> Namibia Non-Governmental Organisations Forum (NANGOF) and Legal Assistance Centre, *Civil Society Report on the Implementation of the ICCPR*, (2016), 11.

on discrimination, hate speech and equality courts, in line with Namibia's existing National Human Rights Action Plan;

- remove the restriction in the Combating of Domestic Violence Act 4 of 2003 to ensure that protection is afforded to persons living in same-sex relationships;
- take effective action to monitor, investigate, prosecute, and punish violence targeted toward LGBTI individuals;
- consider measures to make it easier for LGBTI persons to report rape, abuse and other crimes without victimization;
- discipline acts of police harassment, violence, and coercion directed toward the LGBTI individuals;
- provide comprehensive sensitization on LGBTI issues for the police and other justice system actors;
- take steps to reduce the length of pretrial detentions and improve prison conditions, including overcrowding, and ensure that juveniles are detained separately from adults;
- take measures to protect transgender women from violence and sexual assault while in detention;
- make every effort to ensure that Correctional Services is fully staffed with medical personnel, and that they are tasked with monitoring the quality and quantity of food and the provision of medicine. Compulsory monthly reports to the Commissioner of Prisons should be effected; and
- consider providing condoms in prisons and other detention facilities for purposes of public health concerns.