



## **DECLARATION OF THE LEGAL ASSISTANCE CENTRE (LAC) AND THE SOUTHERN AFRICA CHRISTIAN INITIATIVE (SACHI)**

**UPR PRE-SESSION ON NAMIBIA, GENEVA, DECEMBER 2015**

### **Introduction**

This statement is delivered on behalf of the Legal Assistance Centre (LAC) and the Southern Africa Christian Initiative (SACHI), who submitted a joint shadow report with three other organisations for Namibia's 2<sup>nd</sup> cycle. The LAC has worked on human rights concerns in Namibia for 27 years and SACHI for 8 years.

### **Human Rights Concerns**

The following issues will be addressed: (1) rights of persons with disabilities; (2) violations of rights in the criminal justice system; and (3) the right of access to justice and an effective remedy.

#### **1. Persons with disabilities**

##### a) Follow-up to the first review

During the previous UPR, Spain recommended that Namibia align its national legislation with the obligations of the Convention on the Rights of Persons with Disabilities (CRPD), to which it is a signatory.

##### b) New developments since the last review

Namibia has still not yet passed laws to domesticate provisions of CRPD, nor has it submitted its reports to the Committee on the Rights of Persons with Disabilities.

In 2013, Namibia adopted a policy of inclusive education, which seeks to include children with disabilities in the education system. However, there are still only a few schools in the country which accept persons with disabilities in practice and many of these schools lack the necessary infrastructure and facilities to make schools and education accessible to them. Nor are the schools required by law or policy to have such infrastructure.

Workplaces are legally required to make reasonable efforts to accommodate, physically or otherwise, persons with disabilities,<sup>1</sup> but progress by the authorities in eliminating obstacles and barriers to accessibility, as required by the CRPD,<sup>2</sup> has been slow.

Namibia has also made grants available to persons with disabilities. However, as pointed out by the Special Rapporteur on extreme poverty and human rights there are barriers to accessing these grants such as, "lack of information, geographical distance from registration offices or distribution centres and administrative barriers."<sup>3</sup>

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<sup>1</sup> Section 17(2) (b) of the Affirmative Action (Employment) Act, 29 of 1998.

<sup>2</sup> Article 9 of the CRPD

<sup>3</sup> Report of the Special Rapporteur on extreme poverty and human rights, Ibid, paragraph 80

c) Recommendations

We urge that the following recommendations are made: that the authorities:

- continue efforts in the protection of the rights of persons with disabilities by reviewing laws and policies to bring them fully in line with provisions of the CRPD;
- submit its outstanding report to the Committee on the Rights of Persons with Disabilities;
- take steps to eliminate obstacles and barriers to accessibility, including to schools, housing, medical facilities, workplaces and other indoor and outdoor facilities for persons with disabilities; and
- eliminate administrative and other barriers to accessing grants for persons with disabilities

## 2. Criminal justice system

a) Follow-up to the first review

Norway and Sweden made recommendations for the improvement of prison conditions, human rights of prisoners and the separation of juveniles from adults in places of detention.

b) New developments since the last review

In 2012, the Correctional Service Act was passed. It provides for the separation of prisoners into different groups in places of detention.<sup>4</sup> It further states that juveniles awaiting trial or the conclusion of the trial should not be held in correctional facilities.<sup>5</sup> However, the obligation to separate prisoners extends only, “so far as the correctional facility accommodation renders it practicable.”<sup>6</sup> The law also provides for the possibility of juveniles to be held in remand in correctional facilities where there are no suitable places of detention.<sup>7</sup> No requirement is made for them to be held separately from adults or from convicted individuals in such circumstances.

In its mid-term implementation assessment, Namibia stated that it had opened a new Prison, Elizabeth Nepembe Rehabilitation Centre, with juvenile facilities in 2012.<sup>8</sup> This prison is in the

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<sup>4</sup> Correctional Service Act 9 of 2012, section 17 and 64, <http://www.lac.org.na/laws/2012/5008.pdf> (accessed 30 November 2015)

<sup>5</sup> Ibid, section 69

<sup>6</sup> Ibid, section 64

<sup>7</sup> Ibid, section 69

<sup>8</sup> Namibia: Mid-term Implementation Assessment, page 27 and 28, [http://www.upr-info.org/sites/default/files/document/namibia/session\\_10\\_-\\_january\\_2011/mia-namibia.pdf](http://www.upr-info.org/sites/default/files/document/namibia/session_10_-_january_2011/mia-namibia.pdf)

Kavango East region of Namibia. Other regions do not appear to have such facilities and in most cases young offenders are still being held in the same cells as adults.

In addition, the case of a four-year-old toddler killed in police holding cells where he was being held with his mother, has intensified concerns over women being detained with infants in the same cell as other prisoners. The toddler had reportedly been grabbed by the feet and had his head slammed against the cell floor twice by another detainee after an altercation with the boy's mother over tea. In 2014, the Ombudsman launched a report related to this case in which he found a violation of the right to bail; as well as a failure to take the necessary steps that would safeguard the best interest of the child, due to the lack of co-operation between the police and social workers.<sup>9</sup>

#### c) Recommendations

We call for recommendations to be made for Namibia to:

- ensure children are always held separately from adults in places of detention, as well as the separation of different categories of persons in all places of detention at all times;
- ensure detention is used only in exceptional circumstances, including through the provision of bail and use of noncustodial sentences or fines; and
- where, in the given circumstances, alternatives to the detention of mothers along with their children are not possible, ensure mothers with children are held separately from other detainees and prisoners

### 3. Access to justice

#### a) Follow-up to the first review

In the previous review, the UK called on Namibia to take immediate measures to address the capacity issues faced by the justice sector. While this recommendation referred to national courts, we believe the continued suspension of the Tribunal of the Southern Africa Development Community (SADC Tribunal) and adoption of a new protocol in this regard, negatively impacts on this.

#### b) New developments since the last review

In August 2014, Namibia signed the amended SADC Tribunal Protocol which removes individual access to, as well as the human rights jurisdiction of the court. This protocol, if duly ratified, will deprive individuals in the Southern Africa region of a competent tribunal for

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<sup>9</sup> "A Report by the Ombudsman on the Circumstances which Led to the Detention of A Four Year Old Boy With His Mother in the Wanaheda Police Cells", 15 May 2014, <http://www.ombudsman.org.na/reports/investigation-reports> (accessed 15 June 2015)

attaining an effective remedy against the violation of their human rights where their national courts are unable or unwilling. This constitutes a retrogressive step for, if not a violation of, the right of access to justice and an effective remedy guaranteed by Namibia's national and international human rights laws.<sup>10</sup>

c) Recommendations

We urge you to make recommendations for Namibia to:

- refrain from violating the right of access to justice and an effective remedy by ensuring it does not ratify the SADC Tribunal Protocol removing individual access and the human rights jurisdiction of the Tribunal; and
- use its influence to contribute to the restoration of the SADC Tribunal with its original mandate.

LAC and SACHI thank you for your time and consideration.

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<sup>10</sup> Article 5 of the Constitution of Namibia provides for the enforcement by the courts of rights contained in the Constitution. Furthermore, Article 12 provides for access to courts for the determination of civil rights and obligations, as well as any criminal charge against them. Furthermore, Article 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR) and article 8 of the Universal Declaration of Human Rights provide for the right of access to justice and an effective remedy.