

**DECLARATION OF THE SOUTHERN AFRICA LITIGATION CENTRE (SALC), LEGAL ASSISTANCE CENTRE (LAC) AND NAMIBIA WOMEN'S HEALTH NETWORK (NWHN),**

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

## **Introduction**

This statement is delivered on behalf of three organisations, the Southern Africa Litigation Centre (SALC), Legal Assistance Centre (LAC) and Namibia Women's Health Network (NWHN), who submitted a joint shadow report with two other organisations for Namibia's 2<sup>nd</sup> cycle. The two other organisations will make a separate statement.

The three organisations have worked on human rights in Namibia for periods ranging from 8 to 11 years. The concerns raised are based on information obtained by them in the course of their work; as well as substantiated concerns raised during a consultation meeting with 11 human rights organisations in Windhoek, Namibia.

## **Human Rights Concerns**

The following issues will be addressed: (1) harmful traditional practices; (2) coerced and forced sterilisations; (3) restrictive abortion laws; and (4) challenges in accessing health care.

### **1. Harmful Traditional Practices**

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

Traditional laws and cultural practices which perpetuate gender inequality, gender-based violence and the perception that women are inferior to men or are the property of men continue to be a cause for concern.

At the first Universal Periodic Review of Namibia in 2011, the state accepted recommendations by Angola, Azerbaijan and Canada specifically for the elimination of harmful practices; as well as from at least 9 other countries related to the elimination of discrimination against women.<sup>1</sup>

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

Namibian law requires customary practices to be in line with human rights.<sup>2</sup> However, traditional authorities in some communities continue to apply discriminatory laws and practices in the

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<sup>1</sup>Argentina, Chile, France, Italy, Mexico, Morocco, Norway, Sweden and South Africa

<sup>2</sup> Section 14(a) of the Traditional Authorities Act 25 of 2000 states, "In the exercise of the powers or the performance of the duties and functions referred to in section 3 by a traditional authority or a member thereof- (a) any custom, tradition, practice, or usage which is discriminatory or which detracts from or violates the rights of any person as guaranteed by the Namibian Constitution or any other statutory law, or which prejudices the national interest, shall cease to apply" ; The Community Courts Act 10 of 2003 defines customary law as "the customary law, norms, rules of procedure, traditions and usages of a

resolution of disputes brought before them. In addition, customary laws which violate human rights continue to be valid until declared unconstitutional.<sup>3</sup> Little appears to have been done by the government to educate traditional authorities on the need to ensure their decisions do not violate human rights. Nor has there been sufficient public awareness regarding traditional practices which conflict with the constitution and which are thus invalid. The Committee on the Elimination of Discrimination against Women (CEDAW) also raised these concerns in its concluding observations of Namibia's combined fourth and fifth periodic report in July this year.<sup>4</sup>

c) Recommendations

We therefore urge that concerns related to traditional and harmful practices are raised during the upcoming UPR, and that the following recommendations are made: That Namibia:

- continues to explicitly and publicly abolish all harmful and discriminatory customary laws and practices; and
- expand awareness raising campaigns on the negative impact of harmful and discriminatory customary laws and practices, ensuring that traditional authorities are specifically targeted, in accordance with the concluding observations of CEDAW.

## 2. Coerced and forced sterilisation

a) Follow-up to the first review

In the last review, the UK recommended that Namibia investigate cases of forced or coerced sterilisation and educate women about the effects of sterilisation and options available to them. In addition, Canada recommended that Namibia issue clear directives to all health officials prohibiting the sterilisation of women living with HIV/AIDS without their informed consent.

b) New developments since the last review

Positive steps were taken with the 2012 and 2014 court decisions, which found that three HIV-positive women were sterilised without their informed consent in violation of their rights under Namibian law. However women seeking sterilisations from public hospitals are now being required by medical personnel to obtain a police affidavit indicating their desire for the procedure. As the Human Rights Committee has stated, this further violates their rights.<sup>5</sup>

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traditional community in so far as they do not conflict with the provisions of the Namibian Constitution or any other statutory law applicable in Namibia"; and Article 66(1) of Namibia's Constitution states, "Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law."

<sup>3</sup> Article 66(1) of Namibia's Constitution

<sup>4</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Namibia Adopted by the Committee at its sixty-first session (6-24 July 2015), CEDAW/C/NAM/CO/4-5, paragraph 18 and 19.

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNAM%2fCO%2f4-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNAM%2fCO%2f4-5&Lang=en)

<sup>5</sup> The Human Rights Committee has indicated that the imposition of such general requirements on women for sterilisation is prejudicial to other rights in the International Covenant on Civil and Political Rights

The authorities have indicated that steps are being taken to prevent further coerced or forced sterilisation. However, although the courts set standards for obtaining informed consent, the authorities have failed to review and amend outdated laws impacting on informed consent and sterilisation in line with the standards set by the courts. Furthermore, information has not been made publicly available regarding steps being taken, if any, to develop guidelines on sterilisation. Clear directives prohibiting forced or coerced sterilisation are not known to have been issued. In addition the authorities have failed to take steps to ensure redress – including reversal of sterilisation where possible - to those who have been subjected to coerced sterilisation. CEDAW also raised concerns regarding this in its concluding observations.<sup>6</sup>

### c) Recommendations

We call for recommendations to be made for the government to:

- investigate cases of coerced and forced sterilisation and provide redress, including reversal of the procedure where possible, to all women who have been subjected to this, including for those whose cases have prescribed;
- ensure health practitioners are aware of the options available in reducing the risk of mother-to-child transmission and these options are made available to women living with HIV; and
- immediately develop, adopt and implement policies and guidelines relevant to informed consent and sterilisation in line with the guidelines on informed consent adopted by the International Federation of Gynecology and Obstetrics (i.e. the FIGO guidelines).<sup>7</sup>

## 3. Abortion

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

No recommendations were made regarding abortion in the previous review. However, we are concerned about the restrictive abortion laws which place limitations on providers and facilities permitted to perform abortion services, and require judicial authorisation for termination of a pregnancy. This creates unnecessary barriers to accessing safe abortion, particularly for poor and rural women. CEDAW also raised this concern in its concluding observations on Namibia this year.<sup>8</sup>

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(ICCPR), such as the rights to life and not to be subjected to torture, cruel, inhuman and degrading treatment or punishment.

<sup>6</sup>Concluding observations on the combined fourth and fifth periodic reports of Namibia Adopted by the Committee at its sixty-first session (6-24 July 2015), CEDAW/C/NAM/CO/4-5, paragraph 36 - 37

<sup>7</sup> FIGO Guidelines on Informed Consent, <http://www.rodicovstvo.sk/figo-x.htm> (accessed 30 December 2015)

<sup>8</sup>Ibid, paragraph 34

b) Recommendations

We therefore call for recommendations for the government to:

- review the Abortion and Sterilisation Act with a view to eliminating the existing complex and onerous administrative procedures that impede women's access to safe abortion services in accordance with the recommendations of CEDAW,<sup>9</sup> as well as to make information regarding this review readily available to all.

#### 4. Access to health care

a) Follow-up to the first review

Namibian law does not provide for the right to the highest attainable standard of physical and mental health in line with the international human rights treaties that Namibia has ratified.

In addition, obstacles to accessing health remain, particularly for groups such as people living with HIV, persons with disabilities, sexual minorities and sex workers. These groups have reported being stigmatised by health care professionals and receiving poor service from them. The UN Special Rapporteur on extreme poverty and human rights also raised this as a concern following her visit to Namibia.<sup>10</sup>

Germany, Slovenia, Singapore, Cuba and Zimbabwe made recommendations requiring Namibia to ensure access to adequate health facilities and services to women and other groups, as well as to prioritise health sector in development plans and to improve enjoyment of the right to health.

b) New developments since the last review

The National Health Act enacted in 2015<sup>11</sup> provides for the right of every person in Namibia to access state health care services, receive treatment or other medical care and benefit from health services.<sup>12</sup> While this is a positive step, it falls short of the right to the highest attainable standard of physical and mental health.

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<sup>9</sup> Ibid, paragraph 35(b)

<sup>10</sup> Report of the Special Rapporteur on extreme poverty and human rights, Ms. Magdalena Sepúlveda Carmona, Mission to Namibia (1 to 8 October 2012), 17 May 2013, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-36-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-36-Add1_en.pdf) (accessed 30 November 2015), paragraphs 49, 51 and 52.

<sup>11</sup> National Health Act, 2 of 2015.

<sup>12</sup> Article 40 (1) "Every person in Namibia has access to a state hospital or a state health service and is entitled, subject to this Act and to such hospital rules as may be made as contemplated in section 34(2)(b), to - (a) receive treatment or other medical care; and (b) benefit from any of the health services established under this Act"

During the country's mid-term implementation assessment, Namibia stated that an investigation into the operations and conditions of health facilities had been carried out in 2012 and a report delivered to the President in 2013. Namibia further stated that the recommendations contained in the report were receiving the Government's attention. However, the report is not easily accessible and it is difficult to verify whether these recommendations have been implemented. No further information has been made available to the general public or civil society.

In addition, there have been reports that migrants are being charged private patient fees, even in government hospitals, for accessing health services.<sup>13</sup> This is particularly of concern in relation to immigrants on antiretroviral (ARVs) who are at risk of defaulting on their treatment as they cannot afford to pay the fees.

### c) Recommendations

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

- incorporate into the constitution and national legislation, the right to highest attainable standard of physical and mental health, as well as the right to an adequate standard of living;
- take measures to eliminate negative attitudes and discriminatory practices and barriers in the area of health and social services, particularly towards those living with HIV, persons with disabilities, sexual minorities and sex workers, including through formal human rights training and sensitization of health workers and other public officials; improving the working conditions of such workers; and holding them accountable through disciplinary procedures and criminal procedures, where applicable
- ensure access to ARVs for migrants, including by reducing health related costs in accessing them so as to prevent defaulting and the spread of HIV

Thank you for your time.

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<sup>13</sup> This has been reported to NWHN in the course of carrying out its work by migrants in the country.