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NAMIBIA

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE 140TH SESSION, 4-28 MARCH 2024

Amnesty International submits this document to the UN Human Rights Committee in advance of the review of Namibia's third periodic report¹, raising concerns of ongoing challenges faced by the LGBTI community in Namibia based on findings from a report published in January 2024 entitled *We are facing extinction: Escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries*.² This document should not be seen as an exhaustive account of the organization's concerns regarding Namibia's implementation of the Covenant, but rather as an urgent call to address the critical human rights challenges faced by LGBTI persons in Namibia.

LEGISLATIVE DEVELOPMENTS AND THREATS AND LIMITATIONS TO THE RIGHT OF FREEDOM OF ASSEMBLY AND ASSOCIATION

In its most recent report to the Committee the Namibian government stated that 'Namibian non-discriminatory laws apply to all persons regardless of their sexual orientation, the LRDC is in the process of reviewing the law which criminalises Sodomy which has not attracted prosecution ever since independence. Namibia upholds the protection of all citizens irrespective of their sexual orientation. The Ombudsman office had the national human rights action plan that was approved at cabinet inclusive of LGBTI issues. The LGBTI are also protected by Chapter 3, Article 10 of the Namibian Constitution.'³

In May 2023, the Namibian Supreme Court took a significant step towards recognizing the rights of LGBTI people by striking down a high court judgement, which dismissed an application to recognise same-sex unions concluded abroad for immigration purposes (the Digashu case). The Namibian Supreme Court's finding, however, was primarily based on the common law principle that a marriage duly concluded according to laws of another foreign jurisdiction is valid in Namibia and not on recognizing the right of same-sex couples to marry in Namibia. While same-sex marriages cannot be legally performed in Namibia, the Supreme Court stated that refusing to recognize lawful same-sex marriages concluded outside Namibia violated the applicants' constitutional rights to equality and dignity. Specifically, the Court held that interpreting Namibian laws to exclude a spouse in a same-sex marriage infringed the right to dignity of same sex spouses.

The ruling was met with cautious optimism by Namibian LGBTI rights advocates, but it also cast a shadow of uncertainty. Despite the landmark recognition achieved in the Digashu case by the Namibian Supreme Court, indicating a positive step toward acknowledging the rights of the LGBTI community, concerning developments in the form of legislative initiatives have followed.

The introduction of the 'Ekandjo's Bill' represents a regressive stance, seeking to impose restrictions on the rights of the LGBTI community.⁴

The 'Ekandjo's Bill' is a legislative proposal that, if enacted, would significantly impact the rights and freedoms of the LGBTI community. The core provisions of the bill include an attempt to redefine the institution of marriage by limiting it to

¹ Third periodic report submitted by Namibia under article 40 of the Covenant, UN Doc. CCPR/C/NAM/3, 23 May 2022, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FNAM%2F3&Lang=en

² Amnesty International, Africa: *We are facing extinction: Escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries* (AFR 01/7533/2024), 9 January 2024, <https://www.amnesty.org/en/documents/afr01/7533/2024/en/>

³ Third periodic report submitted by Namibia under article 40 of the Covenant, UN Doc. CCPR/C/NAM/3, 23 May 2022, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FNAM%2F3&Lang=en

⁴ https://www.parliament.na/wp-content/uploads/2023/07/Amendments_to_the_Civil_registration_and_identification_Bill_13.pdf

unions between a man and a woman. Furthermore, the bill introduces amendments that explicitly exclude transgender persons from legal unions, reinforcing discriminatory practices within the legal framework.

Equally troubling is the punitive aspect of the 'Ekandjo's Bill,' which goes beyond redefinitions and exclusions. The proposed legislation seeks to criminalize any form of support, celebration, or promotion of same-sex unions. This includes severe penalties, such as imprisonment for up to six years and fines amounting to 100,000 Namibian dollars (\$5,500), creating a hostile environment for the LGBTI community.

These legislative initiatives, in direct contradiction to the Supreme Court's recognition of constitutional rights, not only undermine the progress made but also pose a serious threat to the dignity, equality, and freedom of the LGBTI community in Namibia. The introduction of such restrictive measures reflects a concerning trend that warrants international attention.

Reports also suggest a crackdown by certain religious groups on the LGBTI community in Namibia, with law enforcement seemingly more permissive of religious assemblies than those of queer individuals and their associations.

Amnesty International calls on the Namibian authorities to:

1. Withdraw the 'Ekando's Bill' and any other legislation that seeks to impose restrictions on the rights of the LGBTI community. Emphasize the importance of aligning national laws with international human rights standards, including principles of equality, non-discrimination, and the right to freedom of assembly and association.
2. Expedite the review of laws criminalizing sodomy, with a view to decriminalize consensual same-sex relations and to advocate for legal reforms that uphold the human rights of all citizens, irrespective of their sexual orientation or gender identity.
3. Protect the rights of all citizens, including those of the LGBTI community, under Chapter 3, Article 10 of the Namibian Constitution.
4. Condemn any form of harassment, violence, or discriminatory practices against the LGBTI community in Namibia and to take decisive action to prevent and address such incidents, ensuring the safety and security of LGBTI individuals.
5. Engage in constructive dialogue with LGBTI rights organizations, activists, and the broader civil society with a view to promote educational initiatives to enhance understanding and awareness of the rights and dignity of LGBTI persons in Namibia.
6. Fulfil its international commitments under human rights treaties, including the ICCPR, and aligning national legislation and policies with international standards to ensure the protection of the rights of the LGBTI community.