



Human Rights Violations of Transgender Identifying persons in Namibia

***Namibia Stakeholders Report submitted by 15 October 2020
For Consideration at United Nations Third Cycle of the Universal Periodic Review
By
Transgender, Intersex and Androgynous Movement of Namibia (TIAMON)
Wings To Transcend Namibia (WTTN)
Gender Dynamix (GDx)***

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Introduction

This stakeholder report has been submitted by the following civil society organisations, Wings To Transcend Namibia, TIAMON and Gender Dynamix for the third cycle of the universal periodic review. The report's intention is to state the status of the human rights violations directed transgender or Trans identifying persons in the Republic of Namibia before the United Nations Universal Periodic Review Committee.

In the second cycle, Namibia received ten Sexual Orientation Gender Identity and Sex Characteristics (SOGIESC) related recommendations, however accepted two SOGIESC recommendations out the ten recommendations it received. Those accepted were to "Strengthen existing mechanisms within its institutional infrastructure to eradicate discriminatory, cultural based on customary laws, practices to the detriment of women, children, minorities and LGBT groups" and "Adopt further measures to combat violence and sexual abuse against girls and women, as well as violence and discrimination based on sexual orientation" ¹

Namibia signed and ratified International covenants treatment and protocols most notably the Universal Declaration on human rights, International covenant on civil and political right, International covenant on Economic social cultural rights and the conversation on the elimination of all forms of discrimination against women. However, Transgender persons in Namibia still bear the brunt of the colonial provision which criminalization of the (consensual) sexual activity between adults of the same sex, which untorn diminish the fundamental human rights provisions under chapter 3 of the constitution.

Overview of the legal context for Trans people in Namibia

Namibia has legal obligation to respect and ensure non- discrimination and equality under the law as per article 2(1) and 26 of the ICCPR². As per the ICCPR which Namibia has both signed and ratified, any discrimination based upon attributes such as race, colour, sex and "other status" is prohibited. Chapter 3 of the Namibian constitution protects fundamental human rights and freedom of all people. Even though article 10 (right to equality) of the constitution does not state gender identity or sexual orientation as prohibited grounds of discrimination, the united nation's human rights committee has stated that the phrase "other status" should include gender identity and sexual orientation as among the prohibited grounds of discrimination³.

¹ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NAindex.aspx>

² <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³ <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-rights-in-Nambia.pdf>

Article 17 section 1 of the ICCPR states that “(n)o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”⁴. Article 13 of the Namibian constitution makes provision for the right to privacy⁵. However, having laws which still criminalise consensual same sex activities violate one’s right to privacy because such law are policing the private lives of consenting adults. In the previous review recommendations to repeal all laws which criminalise same sex activity were received by Namibia and the State did not make any commitment or make a pledge regarding repealing such laws⁶. Instead the States continues to produce legislative framework which degrades trans persons.

A typical example is the national Strategic framework for HIV/AIDS 2017/2018 to 2021/22 includes, Transwomen as men having sex with men which personally degrades them as women in the society of Namibia⁷. Thus validity of continued existence of the current sodomy laws when viewed against the constitution provisions, jurisprudence, and international human rights agreement paints a picture of continued criminalisation, victimisation and scapegoating which lead to the violence of the rights of transgender people in Namibia.

On 28th April 2020, a Transgender woman was assaulted by three men who among them is a prominent figure, a former president candidate. A video was taken while the assault was taking place and it the victim is seen tied up while being assaulted and hate speech being used by the very same attackers⁸. The circulation of the subsequent video has stimulated transphobia and hate speech directed to the Transgender community.

Namibian government has supported recommendation to strengthen existing mechanism within it's Institution infrastructure to eradicate discriminatory cultural or base on customary law practice to detriment of women, girls and minority groups which include LGBTI⁹, or specifically transgender individual to date Namibia has no institutional infrastructure that speaks about transgender people in place. As cultural practices and customary laws are the most respected laws by Namibia. These laws are often used to discriminate against transgender persons. The reality is that Namibia has not honoured the voluntary obligations it has made both international and regionally in as far as the trans community is concerned.

⁴<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁵ <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-rights-in-Nambia.pdf>

⁶ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NAindex.aspx>

⁷ <https://hivpreventioncoalition.unaids.org/wp-content/uploads/2018/05/NSF-Final-1.pdf>

⁸ <https://www.namibian.com.na/index.php#close>

⁹ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NAindex.aspx>

Article 12 (1) of the International Covenant on Economic Social and Cultural Rights which recognises the right to enjoy the highest attainable standard of physical and mental health¹⁰. Article 16 of the African Charter on Human and Peoples Rights ratified by Namibia states that (1) “every individual shall have the best attainable state of physical and mental health and (2) ”that parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.^{11”}

The right to health is supposed to be guaranteed as part and parcel of an obligation made by Namibia to the international, regional and national level. Transgender persons in Namibia can apply to change their sex description in the birth register in terms of section 7B of the births, marriages and deaths registration act of 1963 which states that “ the secretary may on the recommendation of the secretary of health, alter in the birth register of any person who has undergone a change of sex, the description of the sex of such person and may for this purpose call for such medical reports and institute such investigations as he may not deem necessary”¹². However, Trans identifying persons barely access the affirming health services due to their unfavourable socio-economic positioning and the lack of qualified health practitioners who can provide affirming services.

Recommendations

1. Constitutional and legislative framework recommendation.

- a. Establish legislative measure to decriminalize sexual relations among adults of the same sex.

2. Non discrimination

- a. Repeal provisions criminalizing sexual relations between consenting adults of the same sex to respect the principal of equality and non discrimination among all people.
- b. Adopt the necessary measures aiming at eliminating the normative provisions which criminalize and discriminate against Transgender people.
- c. Bring it's law in conformity with it's international human rights obligation by repealing all laws which result in or are likely to result in the discrimination of people solely for their sexual orientation or gender identity.
- d. Implement awareness raising campaigns to educate communities, gatekeepers and traditional authorities on violation of rights of transgender

¹⁰ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹¹ [https://au.int/sites/default/files/treaties/36390-treaty-0011 -_african_charter_on_human_and_peoples_rights_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)

¹² <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-rights-in-Nambia.pdf>

individuals.

- e. Adopt further measures to combat violence and sexual abuse against transgender people.

3. Right health recommendations

- a. Provide clear national guidelines to prevent discrimination directed towards transgender persons on any grounds, including sexual orientation and gender identity
- b. Prohibit any discrimination by health practitioners towards transgender identifying persons
- c. For the fact that Namibia does allow the gender marker change, the government should put in place well-equipped doctors and other health practitioners to ensure that transgender identifying persons have access to gender-affirming health care

Concluding notes

- Many Namibian politicians use homophobic statement or language to gain popularity, which encourages an environment of intolerant to work transgender individuals
- Namibia laws provide no protection against discrimination of transgender people
- Violence against transgender individuals is gruesome widespread and facilitate by inaction and at times participation of government actors
- Many transgender people lack access to basic service including health care, (no gender affirming services or health care provider) and police protection due to hostile environment created by the government.

Suggested questions

1. What measures is Namibia taking to address violence and discrimination against Trans persons because of their sexual orientation or gender identity?
2. When will Namibia decriminalise same sex relationships?

Submitting Stakeholders

Transgender, Intersex and Androgynous Movement of Namibia (TIAMON) is Transgender Movement founded by a group of concerned transgender identifying activists for the lack of transgender specific interventions in the broader Lesbian, Gay, Bisexual, Transgender and Intersex movement in Namibia.

Gender Dynamix (GDX) is the first registered Africa-based public benefit organization to focus solely on the transgender and broader gender diverse community. Since its establish in 2005, GDX is an institutionalized non-profit organization (NPO) that is fundamental to the development of the transgender and gender diverse movement(s) in South Africa and across Africa.

Wings To Transcend Namibia (WTTN) is a Transgender rights based organization that acts as th voice for the transgender community in Namibia to further lobby and advocate for the legal gender recognition, nondiscriminatory 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 For and By transgender people.