



**Submission to the Committee on Economic, Social and Cultural Rights
Pre-Sessional Working Group (74th Pre-Session)
Review of the Republic of Namibia**

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About Positive Vibes

Positive Vibes is a Namibian-registered progressive, queer rights organisation working primarily in Southern, East and West Africa and also implementing programs in Central America, South East Asia and North West Asia. We work at the intersection of human rights and health to achieve the “end of othering”. We believe that societies can be open, free, equitable and progressive when all citizens exercise their right to participate in the civic, developmental, and political process of their country. Positive Vibes works with LGBTQ+, sex workers and women-led groups, supporting and accompanying individuals, communities and populations who are stigmatised, marginalised, oppressed, excluded and vulnerable to engage at local and national level – with social attitudes and service-delivery, with policy and programming, and at a structural level – to raise their voice, to more effectively make that voice heard, and to apply their capabilities and experiences to the work of influencing change. Our approach is based on the conviction that people can take charge of their own lives, organisations and movements; strengthen themselves to more effectively shape their own futures; and use their voices and actions to contribute towards the larger goals of social inclusion, social justice and equity.

Introduction

1. We write in advance of the 74th pre-session of the Committee on Economic, Social and Cultural Rights (CESCR) regarding its review of the Republic of Namibia’s compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). This submission addresses the criminalization of sodomy, the lack of comprehensive anti-discrimination legislation, barriers lesbian, gay, bisexual and transgender (LGBT) people face in accessing their rights to work and health and gender-based violence.

Criminalization of sodomy (arts 2(2), 6, 7, 11, 12, 13, 15)

1. Same-sex sexual relations between males are criminalized under Roman-Dutch common law in Namibia. In 2013, the Law Reform and Development Commission (LRDC) examined repealing obsolete laws, including the common law offence of sodomy. It released its report in 2020 in which it called for the abolishment of 34 obsolete laws, including the law criminalising sex between consenting men.¹
2. However, since then the government has failed to implement the findings in the LRDC’s report. The State Party report notes that “the Ministry of Justice (through LRDC) produced a report on the abolishment of the common law offences of sodomy and unnatural sexual offences, with an accompanying draft bill repealing legislative and common law provisions which relate to sodomy and unnatural sexual offences. The report is scheduled to be presented to Parliament for discussion and consideration.”² However, to date these laws have yet to be repealed.

¹ Republic of Namibia. Law and Reform Development Committee. Report on the Repeal of Obsolete Law (March 2014). Available at https://www.lac.org.na/laws/LRDC/25-LRDC-Repeal_of_Obsolete_Laws.pdf.

² UN Committee on Economic, Social and Cultural Rights. Second Periodic Report Submitted by Namibia under articles 16 and 17 of the Covenant (3 May 2023), para 23.



3. The criminalization of sodomy and unnatural sexual offences contributes to a climate of homophobia and transphobia in Namibia resulting in discrimination and stigma against LGBT people, including in their ability to access other rights guaranteed under the ICESCR. This anti-LGBT climate also stigmatizes those who express allyship and support for the rights and needs of marginalized LGBTI communities.

We recommend the Committee ask the Republic of Namibia the following:

4. Please provide a timeline for when the draft bill repealing the common law offences of sodomy and unnatural sexual offences will be introduced in Parliament.

Comprehensive anti-discrimination legislation (art 2(2))

1. LGBT people in Namibia face high levels of discrimination from state and non-state actors in accessing employment, healthcare, and housing.³ Despite the claim in the State Party report that “the Constitution...proscribes all acts of discrimination against any person residing in Namibia. Apart from this, there exist laws and policies aimed at addressing all forms of discrimination”, there is no comprehensive anti-discrimination law which protects LGBT people from discrimination on the basis of sexual orientation or gender identity with respect to employment, healthcare or housing.⁴
2. Recognizing the need for a comprehensive anti-discrimination law, the Office of the Ombudsman submitted a bill on combating discrimination, discriminatory harassment and hate speech to the Government in September 2021. However, this bill still has not been enacted.
3. Further, it is critical to ensure any comprehensive anti-discrimination law includes the prohibition of discrimination on the basis of sexual orientation and gender identity.

We recommend the Committee ask the Republic of Namibia the following:

4. Please provide a timeline for when the bill submitted by the Office of the Ombudsman will be adopted and provide information on the grounds of discrimination covered in the bill.
5. Please provide information on the specific measures taken to address and prevent discrimination against LGBT people specifically with respect to their access to employment, health and housing.

Barriers to the right to work for LGBT people (arts 2(2), 3, 6, 7)

6. Article 6 of the ICESCR guarantees the right to all forms of work and includes the right to be able to work allowing an individual to live in dignity.⁵ Article 7 of the ICESCR

³ WeBelongAfrica, Positive Vibes, UNDP. Inclusive Governance Initiative: Namibia Baseline Report (2021).

⁴ UN Committee on Economic, Social and Cultural Rights. Second Periodic Report Submitted by Namibia under articles 16 and 17 of the Covenant (3 May 2023), para 22; US State Department. 2022 Country Reports on Human Rights Practices: Namibia (2022). Available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/namibia/>

⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant) (6 February 2006).



further guarantees the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions.

7. LGBT people continue to face high levels of discrimination in accessing and in employment. Despite this, the Labour Act 11 of 2007 does not provide for the right to be free from discrimination on the basis of sexual orientation or gender identity. This is a departure from the Labour Act 6 of 1992 which did prohibit discrimination on the basis of sexual orientation.⁶

We recommend the Committee ask the Republic of Namibia the following:

8. Please indicate whether the government plans to amend the Labour Act to specifically prohibit discrimination on the grounds of sexual orientation, and if so, please provide the timeline for such amendment.

Gender-based violence (art. 2(2), 10)

9. We welcome the State Party's commitment "to eliminate all forms of Gender Based Violence" as detailed in paragraph 60 of the State Party report and its recognition that despite its efforts cases of gender-based violence remain high.
10. However, the Combating of Domestic Violence Act 4 of 2003 provides for protection orders in domestic relationships but under article 3(1)(b) does not include domestic violence between same-sex partners and therefore the Protection Orders system made available as a form of police and state protection to applicants facing domestic violence are not available to those in same-sex relationships.⁷
11. The State Party noted that it is reviewing the Combating of Domestic Violence Act, among other laws to address loopholes and further noted in paragraph 61 that the "Ministry of Justice is currently in the process of tabling an amendment to [the Combating of Domestic Violence Act] in an effort to increase text and language that will improve safeguards of protection." However, no amendment has been tabled as of yet.

We recommend the Committee ask the Republic of Namibia the following:

12. Does the proposed amendment to the Combating Domestic Violence Act include the protection of persons living in same-sex relationships? If not, is this being considered by government?
13. What steps have been taken to ensure inclusive consultation, including with LGBT people, in the drafting of the amendment to the Combating Domestic Violence Act?
14. Please provide a timeline for when the amendment to the Combating Domestic Violence Act is expected to be tabled in Parliament.

Prisoners' access to healthcare (art. 2(2), 12)

15. Prisoners, especially those living with and vulnerable to HIV, do not have access to quality healthcare services. Currently, prisoners are unable to access condoms in prison and access to pre-exposure prophylactics (PrEP) is restricted.

⁶ WeBelongAfrica, Positive Vibes, UNDP (see note 3).

⁷ Id.



We recommend the Committee ask the Republic of Namibia the following:

16. What specific steps has the government taken to remove barriers to accessing PrEP in prisons and to provide condoms to prisoners?