



NAMRIGHTS

SPECIAL ALTERNATIVE REPORT AS SUBMITTED TO:
UN HUMAN RIGHTS COMMITTEE
During its 116th Session Relating to the Consideration
of Second Periodic Report of Namibia

January 25 2016

NamRights Inc, Liberty Center, 116 John Meinert Street, Windhoek-West, P
O Box 23592, Namibia, Tel: +264 61 236 183, Fax2Email: +264 88 640
669, Fax: +264 61 234 286, Email1: nshr@iafrica.com.na; Email2:
nshr@nshr.org, Web: www.nshr.org.na

I. ABOUT NAMRIGHTS INC

NamRights Inc (“NamRights”) is a private, independent, non-partisan and non-profit making human rights monitoring and advocacy organization. Founded on December 1 1989 by concerned citizens, the Organization envisages a world free of human rights violations. Its mission is to stop human rights violations in Namibia and the rest of the world.

NamRights bases its legal existence on the provisions of Article 21(1) (e) of the Namibian Constitution as well as Article 71 of the UN Charter, read with Economic and Social Council Resolutions 1296 (XLIV) and E/1996/31. The Organization is lawfully registered in terms of Section 21(a) of the Companies Act 1973 (Act 61 of 1973), as amended, as an association incorporated not for gain. African Commission on Human and Peoples' Rights of African Union (in 1993) and UN Economic and Social Council (in 1997) recognize NamRights as a *bona fide* human rights organization truly concerned with matters in their respective competence. The organization can be reached via this address:

NamRights Inc

Liberty Center

116 John Meinert Street

Windhoek-West

P. O. Box 23592

Windhoek

Namibia

Tel: +264 61 236 183/+264 61 253 447/+264 61 238 711

Fax: +264 88 640 669/+264 61 234 286

Mobile: +264 811 406 888

E-mail1: nshr@iafrica.com.na

E-mail2: nshr@nshr.org.na

Web: www.nshr.org.na

II. EXECUTIVE SUMMARY

1. This Special Alternative Report observes and proposes that the Government of the Republic of Namibia (“State Party” or “State under Review (‘SuR’)”) is not acting in good faith *vis-à-vis* any of its obligations under the various human rights treaties and or instruments.
2. In connection with the above statements, due regard of Human Rights Committee (“HRC”) should be had to NamRights’ postulation that: (1) State Party pays lip-service¹ in respect of its principal obligations under International Covenant on Civil and Political Rights (“ICCPR”, “Covenant” and “present Covenant”) and or any other human rights treaties to which it is party; (2) that the State Party is a habitual defaulter and or a late submitter of especially its periodic reports under the various human rights treaties to which it is party; (3) that State Party has (so far) failed to make declarations² in terms of the *ad hoc* articles of several core human rights treaties to which it is party; (4) that State Party has generally failed to comply with its undertaking to adopt legislative, judicial, administrative and other measures to give effect to the principles consecrated in the human rights treaties to which its party, as contemplated under *inter alia* Article 2 of Covenant; (5) that State Party has hailed and or has expressly rejected and or generally ignored numerous UN recommendations to ratify and or accede to several core human rights treaties;³ (6) that State Party violates

¹This scheme of things is regardless of what State Party is informing the Human Rights Committee in accordance paragraphs 1-5 of its Second Periodic Report (i.e. UN Doc CCPR/C/NAM/2) which is in any event is submitted late by eight years counting from 2007.

²These declarations include but are not limited to those referred to under: Article 14 of International Convention on the Elimination of All Forms of Discrimination (“ICERD”); Articles 21 and 22 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”); Article 41 of ICCPR; and Article 3(2) of Optional Protocol to Convention on the Rights of the Child relating communications procedures (“OP-CRC-IC”).

³These treaties include but are not limited to: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

peremptory norms of customary international law; (7) that State Party has a generally antagonistic and discordant attitude towards United Nations; and further (8) that State Party's conduct in respect of its voting within the UN system and other international forums relating to human rights is inconsistent with its proclaimed commitment "to promoting recognition and enforcement" of *inter alia* civil and political rights as proclaimed in terms of paragraphs 1-5 of its present Periodic Report and as contemplated under Articles 40 and 1(3) of ICCPR and UN Charter, respectively.

3. While NamRights appreciates the fact that State Party has, albeit perfunctorily, ratified and or acceded to most of the core UN human rights treaties, this Special Alternative Report, nonetheless, claims that State Party has both in theory and practice generally failed and or has neglected to give effect to the principles recognized in such treaties and further that the actual human rights situation on the ground in State Party is, for all intents and purposes, inconsistent and or is at variance with said treaties generally.
4. In connection with the above observations, due consideration by HRC should be had to *inter alia* several reports recently compiled on State Party by several Special Procedures and Thematic Mandates of UN Human Rights Council ("UNHRC"). Specific reference is being made to Special Rapporteur on the Rights of Indigenous Peoples⁴, Special Rapporteur on Extreme Poverty and Human Rights⁵ and

("CMW"); Convention relating to the Status of Stateless Persons; Convention on the Reduction of Statelessness; International Convention for the Protection of All Persons from Enforced Disappearance ("CED"); Optional Protocol to UNCAT ("OPCAT"); Optional Protocol to Convention on the Rights of the Child relating to Armed Conflict ("OP-CRC-AC"); Optional Protocol to International Covenant on Economic Social and Cultural Rights ("OP-ICESR"); UNESCO Convention against Discrimination in Education.

⁴see UN Doc A/HRC/24/41/Add.1; <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/24/41/Add.1&Lang=E>

⁵vide UN Doc A/HRC/23/36/Add.1; http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/36/Add.1

Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation⁶ and Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions⁷ and Working Group on Enforced Disappearances⁸ and Special Rapporteur on Human Rights Defenders⁹ to mention only a few.

III. INTRODUCTION

5. The general objective of this Special Alternative Report is to facilitate and enhance HRC's understanding and appraisal of the actual and factual state of civil and political rights in State Party generally. To this effect and as background information, NamRights is pleased to make specific reference to some of its recently compiled special human rights reports as referred to in paragraphs 8 and 40 of this Alternative Special Report.

6. This Special Alternative Report focuses on certain peremptory provisions of ICCPR, including:

I. Article 1: Right of Peoples to Self-Determination

7. State Party is manifestly in disregard of its obligations of and concerning the right to self-determination of particularly the people¹⁰ of the territory of Caprivi Strip. State Party illegally

⁶*vide* UN Doc A/HRC/21/42/Add.3; http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/21/42/Add.3

⁷see paragraph 56, UN Doc A/HRC/20/22/Add.4

⁸*vide* paragraphs 366-369, UN Doc E/CN.4/2006/56

⁹*vide* paragraphs 1138-1144, UN Doc E/CN.4/2006/95/Add.5

¹⁰For the purposes of this Special Report the term "people" is defined in accordance with the following human rights texts: (1) "International Meeting of Experts on further Study of the Concept of Rights of Peoples", Final Report and Recommendations, SHS-89/CONF.602/7, UNESCO, Paris, February 22 1990, paragraphs 22-23; (2) UN Doc. E/CN.4/SR.253, p.4 (GR); E/CN.4/SR.256, p.7 (YU); E/CN.4/SR.256, p.5 (IND); E/CN.4/SR.257, p.9 (RL); and Bossuyt, M.J., Guide to the '*Travaux preparatoires*' of International Covenant on Civil and Political Rights, 1987, Martinus Nijhoff Publishers, at 32; (3) Leon Diaz, "Do minorities have the right to self-determination?: Minority Rights: Scope and Status", http://www.javier-leon-diaz.com/docs/Minority_Status1.htm

¹⁰Third Periodic Report of France to the Human Rights Committee, UN Doc.CCPR/C/76/Add.7, May 15, 1997, at para.6-17; and also Fourth Periodic Report

annexed this territory on June 24 1999¹¹ in terms of its hastily enacted Application of Laws to the Eastern Caprivi Zipfel Act 1999 (Act 10 of 1999). State Party occupies this territory in gross contravention of Articles I and I (2) of, respectively, Covenant and UN Charter. It is in any event common cause to observe that the right of, among others, the people of Caprivi Strip to self-determination is expressly recognized in various other international instruments, international case law and *opinio juris* as a norm of *jus cogens* and *obligatio erga omnes*.¹² It is common cause to observe that *jus cogens* norms are the highest rules of international law and as such they must be strictly obeyed at all times by all States. Both International Court of Justice (“ICJ”) and the Inter-American Commission on Human Rights (“ACHR”) of Organization of American States have ruled on cases in a way that supports the view that the principle of self-determination also has the legal status of *erga omnes*.

Petition regarding Legal Status of Caprivi Strip

8. Also known as Eastern Caprivi Zipfel, Caprivi Strip is a former British colony administered by British-controlled Union of South Africa either as part of British Protectorate of Barotseland (located in southwestern Zambia) or British Protectorate of Bechuanaland (now Botswana). The Union of

of the Russian Federation to the Human Rights Committee, UN Doc. CCPR/C/84/Add.2, February 22, 1995; Initial report of the United States of America to the Human Rights Committee, UN Doc. CCPR/C/81/Add.4, August 24, 1994, at para. 30; (4) “The Right to Self-determination”, U.N. Doc. E/CN.4/Sub.2/404/Rev. 1, U.N. Sales No. E.80.XIV.3 (1980) and H. Gros Espiell, “The Right to Self-Determination”, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, U.N. Sales No. E.79.XIV.5 (1980); and (5) Leon Diaz, “Do minorities have the right to self-determination?: Minority Rights: Scope and Status”, http://www.javier-leon-diaz.com/docs/Minority_Status1.htm

¹¹*vide* the Application of Laws to the Eastern Caprivi Zipfel Act 1999 (Act 10 of 1999) which was promulgated only on June 24 1999, extending the laws of Namibia to Caprivi Strip, without the consent of the Caprivi Strip people; <http://www.lac.org.na/laws/1999/2139.pdf>

¹²*vide* Karen Parker in “Understanding Self-Determination: The Basics”: <http://www.guidetoaction.org/parker/selfdet.html>; and *vide* “The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?”; <http://www.corteidh.or.cr/tablas/r27634.pdf>

South Africa has directly and separately administered Caprivi Strip since 1939 in terms of Union of South Africa Proclamation 1939 (Proclamation 147 of 1939) of August 1 1939. Specific due regard of HRC should be had to paragraphs 29-58 of the attached *Petition Caprivi Strip: A Sacred Trust of Civilization Betrayed or Forgotten UN Decolonization Obligation?*¹³ This document was compiled on December 10 2013.

9. NamRights notes with serious concern that, in terms of paragraphs 75-80 of its Second Periodic Report, State Party also deliberately attempts to misinform HRC and or withhold information in respect of its non-compliance with its obligations under Covenant regarding the right of Caprivi Strip people to self-determination. Instead, State Party confines itself to references to its election laws and or related extraneous constitutional provisions.
10. Thus State Party should be requested to provide accurate and adequate information to HRC as contemplated under CCPR General Comment 12 (1984).¹⁴

2. Article 2: Nature of General Legal Obligation on States Parties

11. In terms of its legal obligations under Article 2 of Covenant, State Party is required, and or has undertaken, to adopt, in good faith, legislative, judicial, administrative, educative and other appropriate measures in order to fulfill such obligations. This includes, but not limited to, raising levels of awareness about ICCPR among its officials and State agents and the general population. The central obligation under Article 2(I) of Covenant requires State Party to ensure and secure to all

13

http://www.nshr.org.na/javascript/scrubite_editors/xinha/plugins/ExtendedFileManager/images/LEGAL_STATUS_OF_CAPRIVI.pdf

¹⁴vide Human Rights Committee, General Comment 12, Article 1 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 12 (1994); and see also <http://www.refworld.org/docid/453883f822.html>

individuals within its territory and subject to its jurisdiction, all the rights recognized in present Covenant, without distinction of any kind, such as race, color, sex(ual orientation) language, religion, political or other opinion, national or social origin, property, birth or other status.

12. It is common cause to observe that the enjoyment of Covenant rights is not limited to citizens of State Party but also to non-citizens. *Ipsa facto* such enjoyment is applicable and available to all individuals, regardless of nationality or statelessness. This includes asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of State Party. This principle also applies to all those within the power or effective control of the forces of a State Party acting outside its territory, such as forces constituting a national contingent assigned to international peace-keeping or peace-enforcement operations.¹⁵ This state of affairs is regardless of the circumstances in which such power or effective control was obtained.
13. In terms of Article 2(2) of Covenant, State Party is required to unqualifiedly and immediately give effect to the rights consecrated under Covenant and to ensure that Covenant principles are hierarchically superior over and above national law. Where there are inconsistencies and or conflict between national law and Covenant, Article 2(2) requires that national law and or practice be changed to meet the standards imposed by Covenant's substantive guarantees.¹⁶It is therefore common cause to posit that Article 2(2) of Covenant has the same causes and effects as Article 27 of Vienna Convention on the Law of Treaties (“VCLT”).
14. Article 2(3) of ICCPR guarantees, in respect of all individuals referred to above, effective remedies to vindicate the rights enshrined in Covenant. This provision requires administrative bodies and or officials to promptly, thoroughly and effectively

¹⁵see paragraph 10, UN Doc CCPR/C/21/Rev.1/Add.13 (2004)

¹⁶see paragraph 13, UN Doc CCPR/C/21/Rev.1/Add.13 (2004)

investigate all allegations of human rights violations through impartial and independent mechanisms. Article 2 (3) of ICCPR also requires State Party to make reparation to individuals whose Covenant rights have been violated and, where appropriate and or applicable, to make restitution, rehabilitation and institute measures of satisfaction, such as public apologies, public memorials and assurances of non-repetition. Furthermore, the provisions of Article 2(3) dictate that perpetrators of the rights guaranteed by ICCPR must promptly be brought to justice.¹⁷

15. Thus, NamRights also asserts that State Party is in substantial separate breach of ICCPR in so far as its peremptory obligations under Article 2(3) are concerned. Regard should, in any event, be had to the fact that State Party has, in manifest disregard of numerous UN recommendations to that effect, failed to investigate widespread or systematic violations of human rights. This includes those relating to both pre-independence and post-independence acts of enforced disappearance as well as torture and other cruel, inhuman or degrading treatment or punishment (“TCIDT”). In this specific connection regard of HRC should be also had to State Party’s failure to institute a national Truth and Reconciliation Commission (“TRC”) to probe massive pre-independence¹⁸ violations and to bring to justice perpetrators of acts of TCIDT¹⁹ and other grave breaches committed with impunity in

¹⁷see paragraph 15-20, UN Doc CCPR/C/21/Rev.1/Add.13 (2004)

¹⁸http://www.ediec.org/fileadmin/user_upload/Namibia/Impunity_still_reigns_in_Namibia.pdf; and <http://www.hrw.org/reports/1992/06/01/accountability-namibia>

¹⁹“Katima nightmare: Human rights abuses widespread”, *The Namibian online*, August 11 1999; “Caprivi accused tell of torture”, *The Namibian online*, September 21 1999; “Mwilima ‘assaulted: allegations of abuses grow’”, *The Namibian online*, August 10 1999; “Hospital ‘gagged’ on Mwilima”, *The Namibian online*, August 11 1999; “Govt admits abuses: We’ve made mistakes, says Minister”, *The Namibian online*, August 12 1999; “Nam falling foul of international law”, *The Namibian online*, August 13 1999; “Geingob acknowledges mistakes”, *The Namibian online*, August 19 1999; “Churches alarmed: Urge Govt to act”, *The Namibian online*, August 23 1999; “Atrocities ‘ruining Namibia’s image’”, *The Namibian online*, August 25 1999; “Don’t test us, warns Shalli”, *The Namibian online*, August 27 1999; “Caprivi torturers may avoid censure”, *The Namibian online*, August 31 1999; “NSHR slams

Caprivi Strip and other northern areas between 1992 and 2003.²⁰

16. In any event NamRights takes special exception to assertions contained in paragraphs 34-35 of State Party's Second Periodic Report to the effect that allegations of acts of TCIDT, enforced disappearances and summary executions were made only by NamRights and were found to be unfounded following investigations by State Party. As *res ipsa loquitur*, these assertions by State Party are entirely unfounded. In this regard the attention of HRC is drawn to similar reports by, among others, Amnesty International²¹ and by victims²² themselves!
17. State Party is strongly urged to comply in good faith with its legal obligations under *inter alia* Article 2 of ICCPR.

3. Article 4: Non-derogable Rights under State of Emergency

18. Article 4 of Covenant is of overriding importance for the system of protection for human rights under Covenant in that its essence and or *raison d'être* is to subject state of emergency

'Gestapo tactics"', *The Namibian online*, September 1 1999; "Soldiers 'ignored' order on torture"', *The Namibian online*, September 1 1999; "Torture continues: More claims surface in Caprivi", *The Namibian online*, September 3 1999; "Cops probe torture", *The Namibian online*, September 7 1999 and "Lawyers question Govt's commitment to rights", *The Namibian online*, September 14 1999

²⁰"Enforced Disappearances: Discovery of 'No Name' Gravesites", NamRights, August 30 2008; "Angola/Namibia: Human rights abuses in the border area", Amnesty International, March 1 2000, Index Number: AFR 03/001/2000, and CCPR/CO/81/NAM, 2004, paragraph 12

²¹"Angola and Namibia: Human Rights Abuses in the Border Areas; <http://www.refworld.org/pdfid/3b83b6d77.pdf>

²²"Where are our people?", *Namibian Sun online*, September 30 2015; <http://www.namibiansun.com/justice/where-are-our-people.85785>;

"Ndeitunga washes hands of 15 missing San", *Namibian Sun online*, October 5 2015; <http://www.namibiansun.com/local-news/ndeitunga-washes-hands-15-missing-san.86182>;

"Woman remembers 1999 Caprivi killings", *The Namibian online*, June 2 2010; <http://www.namibian.com.na/index.php?id=66626&page=archive-read>; and

"Shocking revelations of torture, mass executions in treason trial", *New Era online*, October 7 2015; and

"Angola and Namibia: Human Rights Abuses in the Border Areas; <http://www.refworld.org/pdfid/3b83b6d77.pdf>

situations to a very specific regime of safeguards. This regime entails the proscription of: (1) detention incommunicado, granting persons such as doctors, lawyers and family members access to persons deprived of their personal liberty; (2) holding of persons deprived of their personal liberty in places that are not publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives; and (3) confessions or other evidence obtained through TCIDT.

19. Article 4 of ICCPR obliges States Parties act strictly within their constitutions and other laws governing the proclamations of states of emergency. Article 4 also requires States Parties commit to a regime of international notification.²³
20. In any event, Article 4(3) provides that a State Party availing itself of the right of the temporary derogation of certain human rights must immediately notify the other States Parties to ICCPR, through the good offices UN Secretary-General, of the provisions the State Party has derogated from and of the reasons for such measures. The rationale behind said notification is to enable HRC and other States Parties to assess whether the measures taken by the State Party were strictly required by the doctrine of proportionality and other exigencies of the situation.²⁴ This requirement of immediate notification applies equally in relation to the commencement and termination of derogation. Such notifications are *sine qua non*, not only for the discharge of HRC's monitoring functions, but also to permit other States Parties to monitor compliance with the provisions of Covenant.
21. Article 4(2) of ICCPR explicitly and absolutely prohibits derogation from Articles 6, 7, 8(1), 8(2), 11, 15, 16 and 18 of present Covenant.²⁵ It is also strictly prohibited to use

²³vide paragraphs 2 and 17, UN Doc CCPR/C/21/Rev.1/Add.11(2001)

²⁴vide Article 4(1) of ICCPR

²⁵vide paragraph 7, UN Doc UN Doc CCPR/C/21/Rev.1/Add.11(2001)

derogation referred to under Article 4(I) to justify any derogation from Articles 2, 3, 14 (I), 23(4), 24 (I), 25 and 26 of ICCPR dealing with the prohibition of discrimination solely on the grounds of race, color, sex(ual orientation), religion or social origin. Article 4(I) also peremptorily proscribes derogation from Article 3 common to the four Geneva Conventions of 1949 and the 1977 Protocols additional thereto as well as other relevant provisions of international humanitarian law governing armed conflict.²⁶

22. Nor may States Parties to Covenant, under any circumstances, invoke Article 4 (I) of Covenant as justification for acting in violation of the peremptory norms of general international law. This includes imposing collective punishments, through arbitrary deprivations of liberty or deviating from the fundamental principles of fair trial, including the presumption of innocence.²⁷
23. It is also common cause to state that under no circumstances may derogation referred to in Article 4(I) of Covenant be invoked as justification for acting in contravention of the absolute prohibitions of genocide, war crimes, and crimes against humanity. This includes, but not limited to, the violations of the rights of persons belonging minorities, deportation or forcible transfer of population without grounds permitted under international law and propaganda for war, or advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence.²⁸ Granting of amnesties and other statutes of limitation as referred to under CCPR General Comment 20 (1994) is also strictly prohibited.²⁹

²⁶see paragraphs 8 and 9, UN Doc CCPR/C/21/Rev.1/Add.11(2001)

²⁷vide paragraph 11, UN Doc CCPR/C/21/Rev.1/Add.11(2001)

²⁸vide paragraph 13, UN Doc CCPR/C/21/Rev.1/Add.11(2001)

²⁹see paragraph 15, UN Doc HRI/GEN/1/Rev.1 at 30 (1994)

24. In light of the above prohibitions as well as those listed under Article 24(3) of the Namibian Constitution, NamRights points out herein that the state of emergency which State Party had declared in Caprivi Strip (now renamed to “Zambezi Region”) on August 2 1999 constituted an unlawful measure entirely inconsistent with State Party’s obligation under Article 4 of ICCPR. State Party (ab)used Proclamation 1999 (Proclamation 23 of 1999) as a license to commit, with extreme impunity, widespread or systematic acts of TCIDT and other large-scale infractions of internationally-recognized human rights.³⁰
25. In this connection, specific regard of HRC should be had to especially Section 12 of State of Emergency Proclamation 1999 (Proclamation 24 of 1999). A copy of Proclamation 24 of 1999 is available here: <http://www.saflii.org/na/other/NAGovGaz/1999/136.pdf>

³⁰see paragraph 29-50 of *Namibia Dossier Containing Evidence of Complicity in and Impunity for Torture and Ill-Treatment*, NamRights, Windhoek, Namibia, May 5 2014,

http://www.nshr.org.na/javascript/scrubite_editors/xinha/plugins/ExtendedFileManager/images/DOSSIER_ON_COMPLICITY_IN_TORTURE.pdf. see also “Katima nightmare: Human rights abuses widespread”, *The Namibian online*, August 11 1999; “Caprivi accused tell of torture”, *The Namibian online*, September 21 1999; “Mwilima ‘assaulted: allegations of abuses grow’”, *The Namibian online*, August 10 1999; “Hospital ‘gagged’ on Mwilima”, *The Namibian online*, August 11 1999; “Govt admits abuses: We’ve made mistakes, says Minister”, *The Namibian online*, August 12 1999; “Nam falling foul of international law”, *The Namibian online*, August 13 1999; “Geingob acknowledges mistakes”, *The Namibian online*, August 19 1999; “Churches alarmed: Urge Govt to act”, *The Namibian online*, August 23 1999; “Atrocities ‘ruining Namibia’s image’”, *The Namibian online*, August 25 1999; “Don’t test us, warns Shalli”, *The Namibian online*, August 27 1999; “Caprivi torturers may avoid censure”, *The Namibian online*, August 31 1999; “NSHR slams ‘Gestapo tactics’”, *The Namibian online*, September 1 1999; “Soldiers ‘ignored’ order on torture”, *The Namibian online*, September 1 1999; “Torture continues: More claims surface in Caprivi”, *The Namibian online*, September 3 1999; “Cops probe torture”, *The Namibian online*, September 7 1999 and “Lawyers question Govt’s commitment to rights”, *The Namibian online*, September 14 1999

4. Article 7: Prohibition of Torture and Ill-treatment

26. The objective of Article 7 of ICCPR is to protect both the dignity and the physical and mental integrity of all individuals. State Party has primary duty to afford everyone protection from TCIDT through *inter alia* the adoption of effective legislative, judicial, administrative and other measures prohibiting TCIDT, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.
27. No derogation, whatsoever, from the provisions of Article 7 is permissible and its provisions must remain in force even in state or public emergency situations such as those referred to in Article 4 of ICCPR. Similarly, no justification or extenuating circumstances may be invoked as an excuse to violate Article 7 for any other reasons, whatsoever, including those based on an order from a superior officer or public authority. Hence, Article 7 of Covenant has the character of a norm of *jus cogens* very much in same fashion as Articles 26 and 27 of Covenant.
28. NamRights is, however, gravely concerned that State Party is in constant breach of its obligations in respect of the absolute prohibition of TCIDT. This scheme of things includes the fact that:

Failure to adopt Measures

29. State Party has failed to adopt effective legal, judicial, administrative and other measures to prevent, investigate, and punish the widespread acts of TCIDT occurring in the territory under its jurisdiction. Specifically, State Party has (so far) failed to incorporate Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”) into its national penal laws as recommended by,

among others, UN Committee against Torture (“CAT”) during its session in May 1997.³¹

30. State Party has also failed to make the requisite declaration in terms of Article 22 of UNCAT that it recognizes the competence of CAT to receive and consider petitions received from individuals in State Party claiming to be victims of TCIDT.
31. State Party has also failed and or ignored specific UN requests to comply with at least 10 CAT recommendations on State Party’s national report made during CAT’s May 1997 session.³² These include a recommendation to create a center for physiological and psychological rehabilitation of victims of TCIDT in State Party.
32. State Party has so far also failed and or ignored to heed the 2004 HRC recommendations. These include a recommendation relating to the establishment “an effective mechanism for the investigation and punishment”³³ of acts of TCIDT, extrajudicial killings and enforced disappearances (“ED”).³⁴ These violations had been perpetrated by State Party security forces in northern border³⁵ areas of the country between 1992 and 2003.
33. State Party has not yet ratified Optional Protocol to UNCAT (“OPCAT”) whose principal objective is to establish in State Party a system of regular visits undertaken by independent

³¹vide Report of the Committee against Torture, General Assembly, Official Records, 52nd Session, Supplement No. 44 (A/52/44) paragraphs 241-251

³²vide Report of the Committee against Torture, General Assembly, Official Records, 52nd Session, Supplement No. 44 (A/52/44) paragraphs 241-251

³³vide CCPR/CO/81/NAM, August 2004, paragraph 12

³⁴<http://www.nshr.org.na/downloadfiles/press/NamibiaGgravesiteFind.pdf>

³⁵<https://www.amnesty.org/en/documents/AFR03/001/2000/en/>

international and national bodies to places of detention in order to prevent TCIDT.

34. Numerous incidents and situations of TCIDT have occurred and continued to occur in State Party both before and after independence on March 21 1990. These incidents and situations include the fact that:
35. Hundreds of Namibians who were systematically subjected to TCIDT and ED prior to Namibian independence remain unaccounted for.³⁶
36. State Party has violently and relentlessly opposed and or resisted NamRights-led campaign relating to the establishment of a truth and reconciliation commission (“TRC”) to probe past abuses of human rights committed both by apartheid South African and SWAPO forces during the struggle for and against Namibian independence.
37. Thousands of citizens and other persons continue to be held under torturous and deplorable conditions in Police cells and correctional institutions throughout State Party.
38. Owing to State Party’s failure to exercise due diligence to prevent, investigate, prosecute and punish and or arrest the so-called passion killings of women and other specific forms of gender-based violence in the country, State Party and or its officials should be considered as authors, complicit or otherwise, responsible for consenting to, or acquiescing in, such impermissible acts.

36

http://www.ediec.org/fileadmin/user_upload/Namibia/Impunity_still_reigns_in_Namibia.pdf

39. State Party has also failed to ensure that adequate criminal and civil sanctions are imposed on individuals, including senior and high-ranking State Party officials and traditional leaders, who continue to actively participate, encourage or acquiesce in the harmful traditional practice of *Olufuko*³⁷ and other sexual initiation and or early girl-child marriages, in blatant disregard of the 2012 recommendations from UN Committee on the Rights of the Child (“CRC”).³⁸

Dossier on State Party Complicity in TCIDT

40. Due regard by HRC is also drawn to the attached *Namibia Dossier Containing Evidence of Complicity in and Impunity for Torture and Ill-treatment*. This document also reveals the existence in Namibia of a consistent pattern of gross, flagrant or mass violations of human rights which are prohibited under Articles 6, 7 and 10 of ICCPR as well as Articles 2 and 3 (2) of UNCAT.
41. The dossier, which was completed on May 5 2014, is the product of an extensive research which NamRights had undertaken over a period of some six months into: (1) the objective of the nationally-televised rancorous statement³⁹ by President Sam Nujoma, as he was then. The significance of such statement is that it was made on November 7 1998, which was nearly one year prior to the alleged secessionist attack in the Caprivi Strip on August 2 1999; (2) the purpose of the State of Emergency (“SoE”) which then President Nujoma, as he was then, declared following such attack; (3) the crimes

³⁷http://www.unicef.org/crc/files/OLUFUKO_Phil_ya_Nangoloh_sw%281%29.pdf

³⁸*vide* CRC/C/NAM/CO.2-3, October 16 2012, paragraphs 42-43

³⁹“Nujoma Denounces Caprivi Secessionists”, Cabinet Briefing/Speech, *New Era*, November 13-15 1998, p.8

committed during and even long after SoE; (4) the conduct of the Office of the Prosecutor General during and after SoE; and, (5) the appointment of incumbent Prosecutor General *per se*.

42. The dossier also seeks to demonstrate at paragraphs 1 to 3 that SoE was deliberately declared as an incentive for ensuring wholesale commission, with utmost impunity, of TCIDT and other international crimes (paragraphs 3, 29, 30, 36, 37, 48 and 50).
43. The dossier lists at least 8 reasons why and how SoE is entirely repugnant to both national and international norms on Human Rights and Rule of Law (paragraphs 38, 46 and 49).
44. The document also demonstrates that SoE was deliberately declared to conceal and cover-up the evidence of systematic acts of TCIDT and other internationally wrongful acts with the apparent view to ensure that the Caprivi Strip separatists are prosecuted and found guilty at all and any cost (paragraph 49).
45. The dossier contains clear and convincing evidence on how and or why the office of the Prosecutor General is complicit in the commission and or conspiracy to commit acts of TCIDT against alleged Caprivi secessionists. The dossier lists at least 16 reasons regarding how and why Prosecutor General is so complicit in TCIDT (paragraphs 48, 56 to 73).
46. The dossier also lists seven grounds about why and how the incumbent Prosecutor General, at the time of her appointment, was neither a fit nor proper person to be entrusted with the responsibilities of Prosecutor General (please see paragraphs 74 to 87). There are also 7 reasons why and how the appointment of the incumbent Prosecutor General was a well-calculated

political move to stifle an independent, impartial, objective, competent and professional prosecutorial authority in Namibia (paragraphs 88 to 95).

47. The document consistently and persistently emphasizes that TCIDT is strictly and absolutely prohibited in all and any circumstances (paragraphs 22-25) and that those who commit this heinous crime, including those who are complicit in this crimes, are viewed as enemy of humankind (see paragraphs 26 and 108). As such, they must be prosecuted wherever and or whenever they may be found (paragraphs 99 to 101).
48. In final analysis, the document seeks to demonstrate that the overall purpose and overarching aim of SoE was “to mete out an appropriate punishment to the terrorists as well as to combat and destroy the secessionists without mercy” (paragraphs 1, 4, 7, 12, 17 and 27) in order to suppress the struggle for the right of the people of Caprivi Strip to self-determination.

5. Article 9: Right to Liberty and Security of Person

49. Article 9 of Covenant recognizes and protects both liberty of person and security of person. “Liberty of person” refers to freedom from arrest and or arbitrary detention (i.e. bodily confinement) in connection with a criminal charge in the manner contemplated under Articles 12 and 11 of, respectively, ICCPR and Namibian Constitution generally, irrespective of nationality as contemplated by Articles 2, 26 and 27 of Covenant.
50. Deprivation of personal liberty refers to more severe and large-scale restriction of motion than mere interference with freedom of movement as contemplated under Article 12 of

Covenant.⁴⁰ Typical examples of “deprivation of liberty” include police custody, remand detention, imprisonment after conviction, house arrest,⁴¹ administrative detention, involuntary hospitalization,⁴² institutional custody of children and confinement to a restricted area of an airport,⁴³ as well as being involuntarily transported⁴⁴ to a destination. They also include certain further restrictions on a person who is already detained, for example, solitary confinement or the use of physical restraining devices.⁴⁵

51. “Security of person”, on the other hand, refers to freedom from bodily and mental injury or bodily and mental integrity of everyone regardless of nationality and without distinction as contemplated by Articles 2, 26 and 27 of Covenant. The right to security of person protects individuals against intentional infliction of bodily harm or mental injury whether or not the person is deprived of personal liberty through physical restraint as contemplated in terms of Articles 9 and 12 of Covenant.
52. The right to personal security also obliges States Parties to take appropriate legislative, judicial, administrative and other measures prevent, prosecute and punish in response to death and other foreseeable threats to life or bodily integrity against public servants and ordinary persons coming from any

40vide 263/1987, *González del Río v. Peru*, para. 5.1; 833/1998, *Karker v. France*, para. 8.5.

41vide 1134/2002, *Gorji-Dinka v. Cameroon*, para. 5.4; see also concluding observations: *United Kingdom (CCPR/C/GBR/CO/6, 2008)*, para. 17 (control orders including curfews of up to 16 hours)

42 vide 754/1997, *A. v. New Zealand*, para. 7.2 (mental health); see concluding observations: *Republic of Moldova (CCPR/C/MDA/CO/2, 2009)*, para. 13 (contagious disease).

43Vide Concluding Observations: *Belgium (CCPR/CO/81/BEL, 2004)*, para. 17 (detention of migrants pending expulsion).

44 vide R.12/52, *Saldías de López v. Uruguay*, para. 13.

45see concluding observations: *Czech Republic (CCPR/C/CZE/CO/2, 2007)*, para. 13; and *Republic of Korea (CCPR/C/KOR/CO/3, 2006)*, para. 13.

governmental or private actors.⁴⁶ Specifically, States Parties to ICCPR must protect everyone from situations of violence such as intimidation of human rights defenders and journalists, violence against women, violence against children, violence against sexual minorities, violence against ethnic minorities and or indigenous minorities as well as against other social minorities, such as persons with albinism, persons living with HIV-AIDS and persons with disabilities or even members of opposition political parties.

53. NamRights notes with serious concern that violence against vulnerable sectors of society, in general, and, in particular, against persons deprived of their liberty, women, children, members of opposition political parties and sexual minorities have been particularly widespread in State Party. NamRights regrets the fact that the Second Periodic Report by State Party provides very little, if any, accurate information on this situation.

6. Article 10: Right of Persons Deprived of Liberty

54. Article 10(I) of ICCPR applies to humane treatment of any person deprived of liberty in terms of Articles 9 and 12 of Covenant and under any other laws or authority in State Party. This includes anyone who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere.
55. Article 10(I) of Covenant also imposes on States Parties a positive obligation towards persons who are particularly vulnerable persons because of their deprivation of liberty. As contemplated under Article 7 of Covenant, Article 10(I) strictly bans TCIDT in and all and any circumstances.

⁴⁶ *vide* 1560/2007, *Marcellana and Gumanoy v Philippines*, para. 7.7.

56. Treating all persons deprived of their liberty humanely and with respect for their dignity is a fundamental and universally applicable rule or norm of *jus cogens* attracting *erga omnes* obligations. This rule is applicable to everyone without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
57. However, NamRights observes and expresses concern that State Party is generally failing to comply with this universally binding norms. This norm is codified in various human rights instruments and other UN standards relating to treatment of all and any prisoners.⁴⁷

7. Article 25: Right to Take Part in Conduct of Public Affairs

58. Article 25 of ICCPR lies at the core of democratic government based on the consent of the people and in conformity with the principles of Covenant. As such, Article 25 of Covenant is exclusively about citizens of State Party and recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. No distinctions are permitted between citizens in the enjoyment of the rights covered by Article 25 on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
59. ICCR requires all States Parties to adopt such legislative, judicial, administrative and other measures to ensure that their

⁴⁷This rule entails but not limited to Standard Minimum Rules for the Treatment of Prisoners of 1957; Code of Conduct for Law Enforcement Officials of 1978; Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1982; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules of 1987; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988.

citizens have an effective opportunity to enjoy all the rights which Covenant protects.

60. HRC observes that the rights guaranteed under Article 25 are related to, but distinct from, the right of peoples to self-determination as contemplated under Article 1 of present Covenant and the right of persons belonging to national or ethnic, religious and linguistic minorities as contemplated UNGA resolution A/RES/47/135 of December 18 1992 and Article 27 of said Covenant.
61. Like Articles 26 and, in certain respect also Article 27 of Covenant, Article 25 deals with the right of individuals to participate in the conduct of public affairs of the countries. Individuals claiming that their rights guaranteed by Article 25 have been violated may approach HRC in terms of Article 2 of (First) Optional Protocol to ICCPR.
62. The guarantees contained in Article 25 of Covenant are virtually the same in content and character as those contained in Article 17 of Namibian Constitution.
63. NamRights observes that the actual and factual situation on the ground in State Party is inherently not conducive to effective enjoyment of the rights guaranteed under Article 25 of Covenant, in particular, and or any other rights guaranteed under ICCPR, in general. Regard of HRC should be had to *inter alia* the fact that State Party is a virtual one-party State owing to it being a one-dominant party State. Due HRC regard should also be had to the fact that political parties in State Party are based on ethnic allegiances and to the fact that one ethnic group, the Ambo, makes up more than 50 percent of State Party's population, while all other ethnic groups combined make up less than 48 percent of the country's population of close 2.3 million.

64. Racism, ethnicity, xenophobia and homophobia as well as most other forms of distinction proscribed by Articles 2, 20, 25 and 26 of ICCPR are generally widespread in State Party as are violations of the provisions of Articles 19, 20, 21 and 22 of Covenant.
65. In final analysis, NamRights registers strong concern that State Party is also in breach of its obligations under Covenant in respect of its perfunctory compliance with the provisions of Article 25 of Covenant.

8. Article 26: Right to Equality, Equal Protection and Non-Discrimination

66. Article 26 of Covenant not only entitles all persons to equality before the law as well as equal protection of the law but it also prohibits discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
67. For the purposes of ICCPR “discrimination” refers to “any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁴⁸ Another useful definition of “non-discrimination” by International Labor Organization (“ILO”) provides that “discrimination” includes: ‘Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has

⁴⁸*vide* Article 1(1), International Convention on the Elimination of All Forms of Racial Discrimination

the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation”.⁴⁹

68. Article 26 of ICCPR also provides that the law shall guarantee to all persons equal and effective protection against discrimination. In other words, Article 26 prohibits discrimination both in law and in fact in any field regulated and protected by public authorities and imposes obligations on States Parties to ICCPR in regard to their legislation and the application thereof. That is to say, when legislation is adopted and or a law is enacted by a State Party, such legislation or law must comply with the provisions of Article 26 and that its contents must not be discriminatory.
69. It is common cause to observe that the application of the principle of non-discrimination contained in Article 26 is not limited to those rights which are provided for in Covenant. Rather, the fundamental principles of non-discrimination, equality before the law, and equal protection of the law belong to the realm of *jus cogens* and attract obligations *erga omnes*. As such, the provisions of Article 26 of ICCPR are binding upon all States whether or not they are party to ICCPR.
70. Due regard should be had to the decision of the Inter-American Court of Human Rights (“IACtHR”) whose Advisory Opinion⁵⁰ was delivered following the US Supreme Court's ruling that undocumented migrant workers from Mexico were not protected by the relevant provisions of the National Labor Relations Act.⁵¹

49vide Article 1(1), Discrimination (Employment and Occupation) Convention 1958 (No. 111)

⁵⁰vide Juridical Condition and Rights of the Undocumented Migrants, Mexico, Advisory Opinion, Advisory Opinion OC-18/03, IACHR Series A no 18, IHRL 3237 (IACHR 2003), 17th September 2003, Inter-American Court of Human Rights [IACtHR], Citation(s): *Advisory Opinion OC-18/03 (Decision No) IACHR Series A no 18 (Official Case No) IHRL 3237 (IACHR 2003)* (OUP reference)

⁵¹vide *Hoffman Plastic Compounds v. NLRB*, 535 US 137 (2002)

War Veterans Act 2008 (Act 2 of 2008)

71. Regard being had to the contents of the preceding paragraphs, NamRights observes that State Party is dire separate breach of its obligations under ICCPR in regard of its War Veterans Act 2008 (Act 2 of 2008).⁵²Section 1 of War Veterans Act 2008 (Act 2 of 2008) blatantly discriminates for obvious political reasons war veterans who, during the liberation struggle for Namibian independence, fought on the side of apartheid South African armed forces.
72. Section 1 of War Veterans Act 2008 (Act 2 of 2008) defines a “veteran” as being:
- “any person who -(a) was a member of the liberation forces; (b) consistently and persistently participated or engaged in any political, diplomatic or under-ground activity in furtherance of the liberation struggle; or (c) owing to his or her participation in the liberation struggle was convicted, whether in Namibia or elsewhere, of any offence closely connected to the struggle and sentenced to imprisonment; but does not include a person who during the war deserted the liberation struggle unless that person subsequently rejoined the struggle;”*
73. Section 1 of War Veterans Act 2008 (Act 2 of 2008) effectively excludes from benefits⁵³for former South West Africa Territory Force and Koevoet (“SWATF-Koevoet”) combatants who fought on the side of South African Defense Forces (“SADF”) against the liberation forces of SWAPO during the struggle for Namibian independence.
74. It is common cause to observe that the provisions of Section 1 of War Veterans Act 2008 (Act 2 of 2008) are grossly at

⁵²This War Veterans Act 2008 (Act 2 of 2008) is accessible online at: <http://www.lac.org.na/laws/2008/4051.pdf>

⁵³*vide* “Ex-SWATF and Koevoet members demand access to Veterans' funds”, *Nampa online*, April 12 2014 and Namibia war veterans vow to press SA for war compensation, benefits for ex-Koevoet, Territorial Force vets”, Written by Oscar Nkala, Wednesday, 17 October 012

variance with the general definition of a war veteran as defined in *inter alia* Title 38 of the US Code of Federal Regulations which defines a veteran as:

“a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.”

75. The definition of war veteran as contained in Section 1 of War Veterans Act 2008 (Act 2 of 2008) is also in consistent with the general essence of the Disarmament, Demobilization and Reintegration (“DDR”) doctrine relating to ex-combatants as espoused by United Nations.
76. It is also significant to observe here that high-ranking State Party officials have persistently engaged in acts of overt hostility and or vengeance against former SWATF-Koevoet soldiers. These acts include propaganda for war and other forms of hate expression.⁵⁴
77. The above-mentioned provisions of Section 1 of War Veterans Act 2008 (Act 2 of 2008) are also extensively used to exclude those ex-members of “the liberation forces” who fled SWAPO for their lives owing to well-founded fear of persecution for *inter alia* reasons of race, religion, nationality, membership of a particular social group or political opinion. It is common

⁵⁴*vide* “Pohamba tells Zuma to ignore Koevoets”, *Namibian Sun online*, May 22 2014 01:00; <http://www.namibiansun.com/government/pohamba-tells-zuma-ignore-koevoets.66151>; “Police detain ex-SWATF-Koevoet activists to foil UN petition”, *Confidente online*, June 26 2014; <http://www.confidente.com.na/2014/06/police-detain-ex-swatf-koevoet-activists-to-foil-un-petition/>; “Swapo calls for SWATF-Koevoet referendum”, *Namibian Sun online*, July 23 2014 at 09:3; <http://www.namibiansun.com/politics/swapo-calls-for-swatfkoevoet-referendum.68925>; “Ex-Koevoet urged to challenge veterans’ law”, *The Namibian online*, November 5 2014; and “Nujoma dared to deport ‘elements of Koevoet’”, *The Namibian online*, December 5 2013

knowledge that hundreds of Namibian exiles have been subjected by SWAPO to *inter alia* summary executions, prolonged detention without trial and enforced disappearance as well as other systematic or widespread forms of persecution during the liberation struggle.

78. NamRights strongly urges State Party to amend its War Veterans Act 2008 (Act 2 of 2008) and make it compliant with *inter alia* Article 26 of present Covenant.

9. Article 27: Rights of Persons belonging to Minority Groups

79. Article 27 of ICCPR guarantees the rights of individuals belonging national or ethnic, religious and linguistic minority groups to enjoy their own culture, to profess and practise their own religion and or to use their own language, in community with the other members of their group.

80. In this connection, persons belonging to such groups also have certain other relevant rights such as freedom of association, freedom of assembly and freedom of expression and opinion. The enjoyment is regardless of whether or not such persons are citizens of that particular State Party. Although the rights protected under Article 27 are individual rights, they depend on the ability of the whole minority group to maintain its culture, language or religion. In the premises, States Parties are required to adopt legislative, judicial, administrative and other positive measures to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group.

81. NamRights is, however, deeply concerned by the systematic denial by State Party of these rights in respect of especially the Rehoboth Baster ethnic minority group. In particular, State Party has since Namibian independence on March 21 1990 been alienating certain properties and institutions which are *sine qua non* for the protection and promotion of the rights of,

among others, the Rehoboth Baster community to enjoy and develop its identity, culture and language as such.⁵⁵ State Party claims that such denial is based on Schedule 5 in Namibian Constitution. NamRights totally disagrees with this disingenuous interpretation of Namibian Constitution which under Chapter 3 expressly recognizes the right to equality and non-discrimination⁵⁶ and the right to own property⁵⁷ as well as the right to culture which includes the right to enjoy, practise, profess, maintain and promote their culture, language and traditions.⁵⁸

82. NamRights urges State Party to comply in good faith with the provisions of Article 27 of Covenant whose protection is directed towards ensuring the very survival and continued development of the cultural, religious and social identity of the Rehoboth Baster minority group. State Party must be required to indicate in its next periodic report under ICCPR the positive measures it has enacted to that end.

IV. CONCLUDING REMARKS

83. The contents of State Party's Second Period Report under present Covenant are generally at variance with the guidelines and requirements for reporting in terms of *inter alia* Article 40 of ICCPR because such contents are generally a rehearsal and recitation of the human rights principles consecrated under Namibian Constitution and or subordinate national law. Very little, if any, is said about the factors which complicate and or nullify the enjoyment of the rights which ICCPR protects and promotes. Even more so very little, if any, is being said in said Report about the factual and actual state of civil and political rights on the ground in State Party.

⁵⁵vide "Basters insist assets unlawfully seized by Government", *Informante online*, May 6 2008; <http://www.informante.web.na/node/2376>

⁵⁶vide Article 10 of Namibian Constitution

⁵⁷vide Article 16 of Namibian Constitution

⁵⁸Vide Article 19 of Namibian Constitution

84. NamRights observes the fact that State Party is substantially in breach of its obligations under ICCPR generally. NamRights laments the fact that State Party is not acting in good faith *vis-à-vis* any of its obligations under the various international human rights treaties and or instruments generally.
85. NamRights strongly urges State Party to change course and to comply with its obligations under Covenant in good faith.
86. NamRights State Party to amend Chapter 3 of Namibian Constitution so as to enshrine thereunder the economic, environmental and social rights contained under especially Article 95 of said Constitution.

V. SUPPORTING DOCUMENTS

In support of the statements contained in this Special Alternative Report, the following documents will be attached:

1. Petition Caprivi Strip: A Sacred Trust of Civilization Betrayed or Forgotten UN Decolonization Obligation?, "PETITION"
2. *Dossier Containing Evidence of Complicity in and Impunity for Torture and Ill-treatment*, "DOSSIER"
3. Application of Laws to Eastern Caprivi Zipfel Act 1999 (Act 10 of 1999), "ACT 1999"
4. State of Emergency Proclamation 1999 (Proclamation 24 of 1999), "PROCLAMATION"
5. War Veterans Act 2008 (Act 2 of 2008), "VETERANS"

VI. RECIPIENT OF SPECIAL ALTERNATIVE REPORT

The direct recipient and beneficiary of this Special Alternative Report is:

Human Rights Committee
Human Rights Treaties Division

Office of UN High Commissioner for Human Rights (OHCHR)

Palais Wilson

52, rue des Pâquis

CH-1201 Geneva

Switzerland

Tel.: +41 22 917 90 00

Fax: +41 22 917 90 08

Mailing address:

UNOG-OHCHR

CH-1211 Geneva 10

Switzerland

E-mail1: registry@ohchr.org

Email2: ccpr@ohchr.org

END