

# EMBASSY/PERMANENT MISSION OF THE REPUBLIC OF NAMIBIA

**REPUBLIC OF NAMIBIA**

**Observations of Namibia on the Human Rights Committee’s draft General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life.**

**6 October 2017**

Namibia wishes to express our sincere thanks to the Committee for its work on General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life and would like to seize the opportunity to submit comments on the draft, particularly on paragraph 55 thereof.

We have welcomed the regional developments on this topic, in particular the November 2015 adoption of General Comment No. 3 on the right to life (Article 4) under the African Charter on Human and Peoples’ Rights, para 22 and we we welcome the finalisation of the draft general comment 36 on the right to life by the Human Rights Committee.

Namibia would like to draw the Committee’s attention to the Report of the United Nations High Commissioner for Human Rights on the High-level panel discussion on the question of the death penalty (A/HRC/36/27), in which paragraph 48 notes that:

“The emerging international consensus that the death penalty was a form of torture or other cruel, inhuman or degrading treatment or punishment was highlighted, as was the fact that a significant number of States already held that to be the case.”

We consider that the death penalty is contrary to the prohibition of torture and cruel, inhuman or degrading treatment or punishment, in relation both to the method of execution and the combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death (the death row phenomenon).

During the Human Rights Council’s 33rd session , General debate item 3, on 16 September 2016 our Permanent Representative of Namibia delivered a statement on behalf of a large number of States and that statement stated, amongst others:

“We share a common objective, which is: to achieve a universal and comprehensive moratorium on execution of the death penalty with a view to universal abolition thereof. We remain strongly opposed to capital punishment in all circumstances and for all cases and we condemn the death penalty as a cruel, inhuman and degrading treatment or punishment.

By its very nature, the execution of the death penalty means that any miscarriage of justice or failure in its application cannot be reversed. No legal system is immune from error, nor is there any reliable evidence to support the argument that the death penalty is a deterrent to serious crime”.

Namibia remains steadfast in its approach towards the abolishing of the death penalty and maintains its position that punishment in the form of the death penalty often aggravates destructive behaviour and does not contribute constructively to a world where criminal justice systems are progressively moving from retribution to reform and rehabilitation. The death penalty is an inhumane, unjust and inefficient sentence, and no circumstances can be used as an excuse to retain it. We recall the Human Rights Council has deplored that the use of the death penalty leads to violations of the human rights of the persons facing the death penalty and of other affected persons.

We reiterate our position on the recognition of the emerging customary norm that considers the death penalty as *per se* running afoul of the prohibition of torture and cruel, inhuman or degrading treatment or punishment. We have observedthe evolution of state practice and *opinio juris* in a manner that increasingly views the death penalty as a practice *per se* incompatible with the prohibition of torture and other ill-treatment. This norm is consistent with the pro-abolitionist spirit of the ICCPR, made clear by Article 6(6).

In March 2017, Namibia welcomed the biennial high-level panel on the basis of this Council’s resolutions 26/2 and 30/5, both of which Namibia co-sponsored and we expressed our thanks to the panel members for their valuable contributions to the discussions as their discussion addressed the human rights violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Namibia supports the increasing international perception that there is a definite link between the imposition of the death penalty and the commission of torture and other types of cruel, inhuman or degrading treatment or punishment, which impacts negatively on the human rights of affected persons.