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ABORTION REFORM JOINT CSO STATEMENT

Voices for Choices and Rights Coalition Submission

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We make this statement on behalf of the undersigned organizations. The Preamble of the Constitution of the Republic of Namibia recognizes the inherent dignity, equal and inalienable rights of *all* members of the human family. However, the **1975 Abortion and Sterilization Act** excludes women, girls gender non-conforming persons from this Namibian family. Members of Parliament are our elected representatives and serve the people as protectorates of the Constitution. We call on the Parliament of the Republic of Namibia to enshrine access to safe on demand abortion as a Constitutional right.

Our Republic was founded on the premise of equality. Yet, 31 years after our Republic's founding, women, girls and gender diverse persons are yet to be emancipated from the shackles of colonial-era oppression. The Act is inherited from a white supremacist apartheid regime. It has no place in a *Born-Free* Republic and was not enacted by democratically elected representatives of the Namibian people.

The current Act promotes **State-Determined Procreation**, without due process of the law, in denying women, girls and gender non-confirming individuals a choice on when to start a family. It involves the government's interference on personal liberty and autonomy and penalizes pregnant persons for making their own reproductive health choices, which is a violation of Article 8 [Respect for Dignity] in prohibiting cruel and inhumane punishment. Courts have placed an emphasis on individual liberty and the protection of privacy which encompasses bodily autonomy: **"individual free choice and self-determination are themselves fundamental constituents of life"** (*ES v AC 2015, Supreme Court of Namibia*).

Presently, it is evident that the criminalization of safe abortions imposes an undue burden on access to healthcare- it defeats public health measures. Unsafe abortions are life-threatening, which is not pro-life, but is in fact anti-choice. The criminalization of abortion does not deter pregnant persons from seeking an abortion. Pregnant persons with unwanted pregnancies are likely to have an abortion regardless whether it is permitted under the law or not. Evidence shows that where the law does not restrict access to safe abortion, rates of mortality and morbidity from unsafe abortion are drastically lower than in more restrictive settings. Thus abortion as a right is a good public health policy choice.

African women, girls and gender non-conforming individuals bear a disproportionate burden of the risks of unsafe abortions- due to African states widespread failure to provide an enabling legal, regulatory, inclusive and liberalized safe abortion policy. Unsafe abortions in Africa accounts for 62% of global unsafe abortion related mortality deaths. This means 29,000 women die each year from unsafe abortion related causes in Africa. In Namibia, 500 preventable unsafe abortion mortality deaths are reported annually. Almost all preventable unsafe abortion related deaths occur in countries with restricted abortion laws- and Namibia is one of them.

In 2014, the **African Commission on Human and Peoples' Rights** adopted the **General Comments on Provisions of Article 14 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa**. Here, the African Commission significantly recognized abortion as a leading cause of death and illness among women in Africa. This is largely due to the association between unsafe abortion and the lack of legal regulation to access safe legal abortions. It is time Namibia liberalizes the Act to save the right to life of women, girls and gender non-conforming individuals with unwanted pregnancies.

Article 144 of the Namibian Constitution obligates the country to adhere to international law. Here, our Republic fails to honor the **Maputo Protocol's** commitment to promote gender equality. This protocol was the first treaty to explicitly recognize safe abortions as a sacred human right. The **Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)** obligates member states to refrain from punitive measures imposed on pregnant persons which denies a lawful reproductive health service, such as safe abortions. Thus, Namibia's policy of **State-Determined Procreation** violates CEDAW, as it constitutes discriminatory practices relating to a pregnant person's health status.

We recommend that the Parliament of the Republic of Namibia decriminalize access to safe abortion procedures as a human right, by repealing the **Abortion and Sterilization Act of 1975**. In order to realize access to safe abortion as a Constitutional right to bodily autonomy we propose the following policy and legal reforms:

- Decriminalize abortion: remove criminal sanctions for pregnant persons;
- Replace the Abortion and Sterilization Act of 1975 (RSA) with a new 'Voluntary Termination of Pregnancy and Sterilization' Act;
- Cost of abortion services for free at any public health institution;
- Abortion granted on the grounds of contraceptive failure;
- Abortion granted on the grounds that a pregnancy affects the pregnant person's socio-economic situation;
- Abortion granted on the grounds of the pregnant person's HIV/AIDS positive status;
- Abortion to be performed and procured by medical doctors, mid-level health care providers such as nurses and midwives, and any health practitioner that can be trained to perform these abortions;
- Pregnant persons from the age of 12 to access abortion upon request without parental and guardian consent;
- The right to terminate an abortion of up to 28 weeks;

- The inclusion of trans and queer bodies whose gender identity and sexual orientation would be met with more stigma and for their reproductive rights to be affirmed;
- Abortion granted where the pregnancy not wanted by minor who is biologically, socially or psychologically unprepared;
- Abortion granted to preserve a pregnant person's life;
- Abortion granted to preserve a pregnant person's physical health;
- Abortion granted to preserve a pregnant person's mental health;
- Abortion granted in the case of incest;
- Abortion granted in the case of rape;
- Abortion granted in the case of other sexual violence;
- Abortion granted in the case of foetal impairment, and;
- Abortion granted on a case-by-case basis as determined by a committee of the applicable health unit "to ensure that the pregnant woman's access and sexual reproductive rights is [sic] guaranteed"

SIGNATORIES:

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