



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Summary record of the 1478th meeting*

Held at the Palais Wilson, Geneva, on Friday, 18 November 2016, at 10 a.m.

Chair: Mr. Modvig

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* No summary record was issued for the 1477th meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Namibia (CAT/C/NAM/2; CAT/C/NAM/Q/2 and Corr.1 and Add.1)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*
2. **Mr. Kawana** (Namibia) said that the State party's report (CAT/C/NAM/2) had been prepared in consultation with the Inter-Ministerial Committee on Human Rights and International Humanitarian Law, the Office of the Ombudsman and civil society organizations. Under the Constitution, torture and other cruel, inhuman or degrading treatment or punishment were expressly prohibited (art. 8) and no court was permitted to accept evidence that had been obtained through torture (art. 12 (1) (f)). In addition, the use of torture to obtain confessions was prohibited under the Criminal Procedure Act of 1977. The case of *S v. Malumo and Others* was an example of a Supreme Court ruling on the inadmissibility of evidence obtained through torture.
3. The Law Reform and Development Commission had drafted a bill which defined and criminalized torture and provided for penalties in accordance with the Convention. The bill had been approved by the Cabinet and would be submitted to Parliament shortly; once it had been passed, the Government would be in a position to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as recommended by the Human Rights Council.
4. The human and financial resources available to the Office of the Ombudsman had been increased to enable it to investigate human rights violations, run awareness programmes and provide human rights training. It had launched a campaign in September 2015 to encourage people to report cases of torture to the relevant authorities and, in cooperation with the police, it had developed a manual for police officers to promote compliance with the Convention. The Legal Assistance Centre and several universities had also played a role in compiling human rights training manuals for law enforcement officials. The Office of the Ombudsman had provided human rights training for various ministries at their request, while the Ministry of Defence had organized workshops for its staff, in collaboration with the International Committee of the Red Cross and local institutions, on human rights and human rights law. Corporal punishment in the home was prohibited under section 228 (1) of the Child Care and Protection Act of 2015. Prison conditions had improved drastically thanks to the ongoing renovation work in most facilities and some police stations; in addition, two new facilities were under construction.
5. **Mr. Hani** (Country Rapporteur), noting the very late submission of the second periodic report, which had been due in 1999, said that the Committee hoped to re-establish more regular contact with the Government and would like the delegation to confirm the Government's commitment to periodic reporting in accordance with article 19 of the Convention. He congratulated the State party on its acceptance of the recommendation to ratify the Optional Protocol and to establish a national preventive mechanism. He wished to know whether the State party planned to make the declarations provided for in articles 21 and 22 of the Convention, recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction or submitted by another State party.
6. The Committee welcomed the progress that had been made on the bill which criminalized torture and would like to know more about its content. Recalling paragraph 241 of the Committee's report of 1997, he emphasized that the bill should cover all the

substantive obligations set out in the Convention. It should prohibit, criminalize and punish not only torture, but also other cruel, inhuman or degrading treatment or punishment. On that basis, victim status should apply to all victims of ill-treatment. The bill should define the right to redress and rehabilitation in line with article 14 of the Convention and general comment No. 3 of the Committee. It should explicitly establish the absolute nature of the prohibition of torture, the fact that an order from a superior officer could not be invoked as a justification of torture, and the principle of command responsibility. Under the bill, universal jurisdiction over crimes of torture should not be exercised at the sole discretion of the public prosecutor but rather under judicial supervision. If the bill addressed the issue of training, it should incorporate the Istanbul Protocol. It should provide for the protection of victims of retaliation and the prevention of torture. Lastly, it should emphasize the non-derogable nature of the prohibition of torture and exclude any form of impunity, immunity, amnesty or statutory limitation in cases of torture.

7. Noting allegations by NGOs that torture remained a routine practice in Namibia, he wished to know what measures were being taken by the Government to eliminate that practice. The Committee, along with other treaty bodies, considered that the Government should amend Act No. 7 of 1990 to confer greater independence on the Office of the Ombudsman, particularly in the handling of complaints, the conduct of unannounced visits to places of custody and the recruitment of staff, in line with the Paris Principles. The present periodicity of visits — two per year — was insufficient to enable effective monitoring of detention facilities, and the Office of the Ombudsman itself had called upon the Government to increase its monitoring capacity. The Committee wished to know what coordination mechanisms had been or would be introduced to monitor the effective implementation of the Ombudsman's recommendations. With regard to the *Mcnab and Others v. Minister of Home Affairs* case, it would like to know what measures had been taken to improve prison conditions not only for the plaintiffs in question but in all places of custody. Further information would also be appreciated on the number of complaints that had been investigated by the Internal Investigation Directorate of the Namibian Police and how many of those complaints had led to legal action.

8. Noting the lack of comprehensive, clear regulations on fundamental legal safeguards, and reports from a range of credible sources that the implementation of those safeguards was undermined by delays in the justice system, he wished to know what obstacles prevented their effective implementation and what steps had been or would be taken by the authorities to tackle those obstacles. He would also like further information on what progress had been made on the plan to open mental health facilities in Windhoek, Oshakati and Rundu by 2018 and in Keetmanshoop by 2023, whether the Ombudsman had the right to conduct an unannounced visit to the existing mental health facility, whether he had made such a visit and, if so, what recommendations he had made and what steps the Government had taken in response. With regard to section 69 of the Mental Health Act, the Committee wished to know whether there was a time limit on the use of physical restraint.

9. More information would be appreciated on any guarantees that were provided, in law and in practice, to protect persons from wrongful and unlawful detention. Drawing attention to the fact that the use of chains, as in the case of *Namundjebo and Others v. Commanding Officer, Windhoek Prisons and Others*, was not only "uncomfortable", as stated in the periodic report, but extremely cruel, inhuman and degrading, he wished to know whether the officers responsible had been sentenced by the Supreme Court after their acquittal by the High Court, whether such techniques were still used, and what legislative, administrative and procedural measures had been taken by the authorities to eliminate them. The Committee would also like to know what measures had been taken to address the delays in the preparation of records of proceedings in order to enable the effective exercise of the right to appeal.

10. He wished to know whether the State authorities respected the principle of absolute prohibition of torture in all circumstances and whether the Prevention and Combating of Terrorist Activities Act was in line with the Convention.

11. The delegation should indicate whether investigations had been launched into allegations of mass violations of human rights committed during states of emergency. The allegations had been brought to the Committee's attention by NGOs of recognized standing that had been granted consultative status by the United Nations and by the African Commission on Human and Peoples' Rights.

12. He would be grateful for a response to reports that, in 1999 and subsequently, the State party had violated the principle of non-refoulement by returning individuals to Botswana and Zambia, where there had been, at the time, a consistent pattern of mass violations of human rights. In that connection, he asked what follow-up action, if any, had been taken concerning the 2005 Advisory Opinion issued by the Working Group on Arbitrary Detention in the case of *John Samboma et al. v. Namibia*. It would be interesting to know why the 2,400 Angolan citizens mentioned in paragraph 96 of the State party's report were classed as former refugees and in what way their status had changed. The delegation should provide details of any guarantees of non-refoulement in the Refugees (Recognition and Control) Act of 1999, state whether failed asylum seekers had the right to appeal and, if they did, explain whether appeals were administrative or judicial in nature and whether they had suspensive effect. Did the Act contain an explicit reference to the risk of torture as a reason for refusing to expel or extradite a person?

13. He wished to know whether there was a mechanism for assessing, on a case-by-case basis, the risk of torture and ill-treatment that a person might face in the event that they were returned to their country of origin. He would also welcome statistics on the total number of asylum seekers in the State party. The delegation should clarify how many asylum seekers had come from the Democratic Republic of the Congo, in particular from the provinces of North and South Kivu, and what had become of them.

14. He requested details of the State party's cooperation with the Office of the United Nations High Commissioner for Refugees, especially with regard to upholding the principle of non-refoulement, and asked whether refugee certificates issued by the Office were taken into account during the examination of asylum applications. The delegation should provide information on the living conditions of refugees in the Osire settlement and describe what was being done to improve their human rights situation, which, according to alternative sources, was precarious. It would be useful to know whether the State party intended to ratify the Convention Governing the Specific Aspects of Refugee Problems in Africa, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

15. He invited the delegation to elaborate on the scope of application of the Extradition Act of 1996 and to specify whether the Act covered the crime of torture and contained an explicit reference to the risk of torture as a reason for refusing to extradite a person.

16. Noting reports that some State officials had expressed negative opinions about the International Criminal Court, he enquired about the Government's official position in that regard.

17. **Ms. Pradhan-Malla** (Country Rapporteur), commending the State party for sending a high-level delegation and for enacting a bill that specifically criminalized torture, said that the delegation should comment on whether and, if so, how the principle of absolute prohibition of torture, methods for identifying victims of torture, the provision of fundamental safeguards to detainees, the Istanbul Protocol and the Standard Minimum Rules for the Treatment of Prisoners were addressed in the training given to members of the Namibian Police, the National Defence Force, the Prisons Service, other law enforcement

personnel and medical officers. She wished to know whether human rights training was mandatory for police officers, how many people had received such training, and whether and, if so, how its effectiveness was monitored and evaluated. Moreover, she would appreciate details of any criminal or disciplinary proceedings that had been instituted against police officers accused of torture.

18. Noting that, according to paragraph 111 of the State party's report, judges and prosecutors received no formal training on the prosecution and punishment of perpetrators of acts of torture, she recalled the importance of such training and expressed the hope that, in its next periodic report, the State party would include information on the content and outcomes of training programmes for judges and prosecutors.

19. She asked how many visits had been undertaken by the Ombudsman's Office to places of custody, what findings and recommendations had been published, and what follow-up action had been taken. The delegation should state whether measures were being taken to set up a national preventive mechanism to conduct such visits.

20. It would be helpful to know how many complaints had been lodged with the Internal Investigation Directorate of the Namibian Police and how many criminal or disciplinary proceedings had been instituted in consequence, particularly since the publication of the Inmate Information Handbook and the Code of Conduct for Prison Members.

21. She would be grateful for information on the number of pretrial detention centres in the State party, on whether men and women were held separately, on the number of detainees, on the average duration of pretrial detention and on the offences concerned. Statistics on the backlog of cases pending before the national courts and details of the outcome of measures to reduce that backlog would also be welcome.

22. The delegation should provide information on living conditions in prisons, including with regard to the size of cells, hygiene and access to medical services. She wished to know how many prisoners were men, women, or lesbian, gay, bisexual, transgender or intersex (LGBTI) persons, how many had HIV/AIDS, how many had access to antiretroviral therapy, what measures, including universal precautions, were taken to minimize the risk of HIV infection, whether HIV-positive prisoners were segregated, how respect for the dignity and human rights of such prisoners was ensured and whether condoms were distributed in prisons.

23. She requested a copy of the bill that had been enacted to criminalize torture and sought clarification on the definitions of torture and victim contained therein. She asked whether the bill criminalized cruel, inhuman or degrading treatment or punishment and whether and, if so, how it enabled national courts to exercise universal jurisdiction over the offence of torture. Details of the measures taken to combat impunity, particularly for crimes committed during the process of democratization and during states of emergency, would also be welcome.

24. She invited the delegation to comment on reports that the Amnesty Proclamation of 1989 and the policy of national reconciliation pursued by the Government had allowed members of the South West Africa People's Organization who were suspected of having committed atrocities during the liberation struggle to return to Namibia without fear of being put on trial.

25. The delegation should explain whether the Government intended to implement paragraph 247 of the Committee's previous concluding observations (A/52/44), in which it was recommended that the disappearances of former members of the South West Africa People's Organization should be promptly and impartially investigated and that, in all situations where reasonable grounds existed to believe that those disappearances amounted

either to torture or to other forms of cruel, inhuman or degrading treatment, the victims or their dependants should be afforded fair and adequate compensation.

26. She wished to know whether the Caprivi treason trial was still under way and whether it was true that, during the state of emergency declared in 1999, the accused had been subjected to torture and other ill-treatment with impunity and systematically deprived of fundamental legal safeguards. The delegation should respond to reports that the Attorney General's Office had not been independent.

27. The State party had provided no response to the Committee's request for information on the number of complaints received concerning torture or cruel, inhuman or degrading treatment involving State agents, including superior officers and public authorities, on the number of criminal and disciplinary proceedings instituted and on any sanctions imposed.

28. With reference to paragraph 137 of the State party's report, she asked whether the investigations that had led to the discovery of a mass grave in the village of Ohauwanga had been carried out by an independent group.

29. She would appreciate information on the steps taken to ensure that victims of torture or their families were granted full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. She asked how the concept of rehabilitation was defined in national law, what impact improvements in the provision of legal aid had had on the enjoyment of rights by victims and how legal representation was guaranteed for persons in custody.

30. She requested a more detailed explanation of why the *prima facie* evidence mentioned in paragraph 145 of the State party's report had been declared inadmissible and asked whether the prohibition of evidence obtained through torture in article 12 (1) (f) of the Constitution had been integrated in Act No. 25 of 2004 or in any other legislation.

31. The delegation should explain whether, in domestic law, child sexual abuse was criminalized and whether the definition of rape went beyond vaginal penetration. She wished to know whether any special programmes or heavier sanctions were in place to combat the rape of girls, whether victims were awarded compensation, and what actions were taken to rehabilitate victims, prevent their stigmatization and encourage them to pursue grievances through the formal justice system rather than accepting out-of-court settlements.

32. Turning to paragraph 154 of the State party's report, she asked why it had not been possible to substantiate the allegations of the rape of a number of San women and the two cases of rape reported in the Osire refugee camp in 2006. The delegation should describe what evidentiary value had been given to any statements made by the alleged victims and any documentary evidence presented by NGOs.

33. Noting that the number of intimate partner homicides and child marriages was increasing and that there was a low prosecution rate for domestic violence, she asked what educational measures were being taken to rectify the situation. It would also be interesting to receive information on the bail conditions for persons accused of violence against women and on the mechanisms in place for the issuance of restraining and protection orders.

34. She would appreciate information on the Government's efforts to put an end to the compulsory sterilization of women living with HIV/AIDS, on the investigation of claims of forced sterilization and on the punishments imposed on persons found guilty of that offence. In the light of reports of human rights abuses against sex workers, including reports of prolonged detention without charge, she wished to know whether steps had been taken towards the decriminalization of sex work.

35. Owing to the continued criminalization of consensual same-sex sexual activity, LGBTI persons faced many difficulties. In some cases, LGBTI persons had reportedly been subjected to ill-treatment in detention centres. Pursuant to the Immigration Control Act No. 7 of 1993, foreign nationals who had been convicted of sodomy were classified as prohibited immigrants. In that connection, she wished to know what efforts had been made to ensure that the principle of non-refoulement was respected in cases involving individuals at risk of persecution on the basis of their sexual orientation or gender identity.

36. She asked what measures had been taken to ensure the effective implementation of the Child Care and Protection Act. It would also be helpful to know whether any progress had been made towards the introduction of specific legislation on trafficking in persons. More information on the impact of new legislation on how juvenile offenders were dealt with and the placement of children in remand homes would be welcome.

37. **Mr. Bruni** said it was regrettable that the State party had submitted the report under consideration 16 years late. He would be grateful for clarification regarding the status of the Convention in the domestic legal order. Had it ever been directly invoked before the courts? If it had, could the delegation provide any examples? Confirmation that detainees were guaranteed the right to a medical examination would be appreciated.

38. He wished to know which State body had the authority to deport asylum seekers and illegal immigrants who had committed minor offences. Could deportation orders be appealed? With regard to respect for the principle of non-refoulement, some explanation of the apparent contradiction between paragraph 91 and paragraph 215 of the State party report would be appreciated. In addition, section 24 (1) of the Refugees Recognition and Control Act No. 41 of 1999, which provided for the expulsion from the State party of recognized refugees and asylum seekers in certain circumstances, appeared to be incompatible with article 3 of the Convention.

39. He asked what specific measures had been taken to combat overcrowding and the high prevalence of HIV/AIDS in prisons. According to recent reports in the media, correctional facilities in the State party were understaffed and poorly funded. Could the delegation comment on the accuracy of those reports and inform the Committee of any measures taken to improve the situation?

40. **Ms. Belmir** said that she would be grateful for an explanation of the rationale behind the amendment of the Criminal Procedure Act No. 25 of 2004 granting prosecutors the authority to issue fines. She asked what progress had been made in developing a legislative framework to combat and prevent trafficking in persons. She wished to point out that the Convention on the Rights of the Child defined a child as any person aged under 18 years. More information on the extent of the jurisdiction conferred upon traditional leaders and the oversight of their work by the Supreme Court would be welcome.

41. **Ms. Gaer** said that she would be grateful if the delegation could comment on its experience of the simplified reporting procedure and the involvement of the Inter-Ministerial Committee on Human Rights and International Humanitarian Law in that regard. Had the questions contained in the Committee's list of issues prior to reporting each been allocated to a particular ministry? She would be grateful for an update on the prosecution of the three police officers who had been charged with culpable homicide in connection with the death of William Cloete in police custody in 2007.

42. The Office of the Ombudsman had recommended that the Domestic Violence Act No. 4 of 2003 should be accompanied by various non-legislative measures, including tolerance education. Could the delegation provide further information on the State party's response to the Ombudsman's recommendation? She wished to know whether any measures had been taken to increase the conviction rate for cases of gender-based violence, which remained low.

43. An update on the plan to ratify the Optional Protocol to the Convention against Torture would be appreciated. Had the relevant bill been drafted? Would it contain a recommendation to set up a national preventive mechanism?

44. With regard to the principle of non-refoulement, she would be grateful for more information on the case of Kris Kelly, a citizen of Uganda who had sought asylum in Namibia owing to fear of persecution due to his sexual orientation. In that connection, she asked whether the delegation was familiar with the South African Refugees Act of 1998, which listed sexual orientation as one of the grounds on which refugee status could be granted. Were there plans to introduce similar legislation in the State party? Had consideration been given to the possibility of developing guidelines on how to process asylum claims on the ground of fear of persecution due to sexual orientation or gender identity?

45. **Mr. Zhang** said that more information on the training offered to health-care professionals who worked in prisons would be helpful. Did their training include the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

46. **The Chair** said that the State party should be commended for the success of its efforts to improve conditions in prisons. According to World Prison Brief, pretrial detainees represented only 6.6 per cent of the prison population, the occupancy level was less than 100 per cent, and the prison population had been declining since 2000. He would be grateful for more information on the availability of health-care services in prisons and detention centres. How many doctors were present in the State party's 13 correctional facilities?

47. The State party's efforts to combat corruption were also worthy of commendation. In that connection, he wished to know whether there had been any allegations of corruption in the criminal justice system. For example, had there been allegations of corruption relating to criminal court cases involving torture, the length of time spent in pretrial detention or special treatment in prison? If allegations of that kind had been made, it would be helpful to know how they had been dealt with. What measures had been taken to prevent corruption in the criminal justice system?

48. **Mr. Hani** said that the Committee had received reports of a shortage of medical personnel in correctional facilities in the State party. It would be useful for the delegation to provide more details on that issue. He wished to know whether the Government had introduced regulations to allow conjugal visits for detainees. Drawing the delegation's attention to reports of the practice of sexual initiation of girls, he recalled that the Convention obligation for States parties to prevent ill-treatment covered the behaviour of private individuals as well as of agents of the State.

49. The Committee had been made aware of a statement by the Inspector General of the Namibian Police in which he appeared to acknowledge that the suspects in the Caprivi high treason case had been subjected to atrocious forms of torture. Had the Government launched any investigation into the Inspector General's comments?

50. The delegation should clarify whether the provisions of the Southern African Development Community Protocol on Extradition were compatible with the Convention.

51. In the light of the prevalence of HIV in prisons in the State party, he wished to learn about the measures being taken to halt the spread of the disease.

52. **Ms. Pradhan-Malla** said that she wished to know whether the Government intended to accept the competence of the Committee to receive communications under article 22 of the Convention. It would be interesting to learn whether the Government planned to extend responsibility for the implementation of torture prevention measures to

Parliament and the judiciary. Did the Government intend to establish a mechanism to implement the recommendations of the Committee?

The meeting was suspended at 11.50 a.m. and resumed at 12.30 p.m.

53. **Mr. Kawana** (Namibia) said that his country was rated highly among African nations for good governance, the protection of human rights, press freedom and the independence of the judiciary. Recalling the 24 years of armed struggle to achieve independence, he wished to draw the Committee's attention to the emphasis placed on national reconciliation in the Constitution. Given that, following the conflict, the United Nations had supervised an amnesty for combatants on all sides, it would not be in the interests of national peace and stability to investigate reports of disappearances during the hostilities.

54. The bill on the prevention and combating of torture would be presented to Parliament at its first session in 2017. Much of the wording of the bill had been taken directly from the Convention. The Government was strongly committed to providing training on the prohibition of torture to security and law enforcement officials. Plans were also under way to table further legislation during 2017 to provide protection for witnesses and whistle-blowers.

The meeting rose at 12.55 p.m.