



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

Distr.  
GENERAL

CAT/C/NAM/Q/2  
25 January 2010

Original: ENGLISH

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COMMITTEE AGAINST TORTURE

Forty- third session  
2-20 November 2009

**List of issues prior to the submission of the second periodic  
report of NAMIBIA (CAT/C/NAM/2)\***

**Specific information on the implementation of articles 1 to 16 of the Convention, including  
with regard to the previous recommendations of the Committee\*\***

**Articles 1 and 4**

1. With reference to the previous recommendation of the Committee (para. 241), please provide detailed information on the measures taken by the State party to enact a law making torture a specific statutory crime in the terms of article 1 and 4, paragraph 1, of the Convention and punishable by appropriate penalties which take into account its grave nature as provided in article 4, paragraph 2.
2. Please elaborate on the measures taken by the State party to further review existing domestic laws in the light of the Convention and enact laws prohibiting torture as required under the Convention in fields that are not yet regulated. In this connection, please provide information on the Law Reform and Development Commission and explain the extent to which it has contributed to implementing this recommendation of the Committee.

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\* The present list of issues was adopted by the Committee at its forty-third session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

\*\* Paragraph numbers in brackets refer to the document containing the previous concluding observations adopted by the Committee, published under symbol A/52/44.

3. With reference to the information provided by the State party, it is not clear whether the Convention is directly applicable in the State party or whether it has first to be incorporated by way of enactment of a domestic law? Please clarify the status of the Convention in the domestic legal order of the State party and indicate if its provisions can be invoked directly before national courts. If so, please provide examples of cases of direct application of the Convention by the Courts.

## Article 2

4. Please provide updated information on the Office of the Ombudsman, its mandate, activities and results and indicate whether in accordance with the previous recommendation of the Committee (para. 246), the State party has taken measures to provide the Office of the Ombudsman with the personnel and financial means to exercise its functions in the field of protection of human rights, as foreseen by the Namibian Constitution. Kindly provide information on the number of complaints related to torture and ill-treatment reported to the Ombudsman and inform the Committee about the measures taken by the State party to implement its decisions. Please provide some examples of such implementation and indicate the steps taken by the State party to implement the recommendations contained in the reports by the Office of the Ombudsman submitted to the Parliament following its 2006 and 2008 visits of police detention cells throughout the country, in particular those recommendations relating to torture and ill-treatment. Please provide a copy of these reports and disaggregated data on the number of persons held in police detention cells in the country for the years 2007, 2008 and 2009, and indicate measures taken to address the overcrowding of police detention cells. Please provide more information about *M. McNab et al. v. Minister of Home Affairs et al.*, the verdict of which was delivered on 12 July 2007 by the High Court of Namibia. Please also provide information on the Human Rights Advisory Committee of the Office of the Ombudsman, the Inter-Ministerial Technical Committee on Human Rights and the Government Coordinator for Human Rights.

5. Please provide updated information on the existing legal safeguards guaranteeing the rights of persons deprived of their liberty from the outset of their detention, including the rights to be informed of their rights, to have access to an independent lawyer and an independent doctor, if possible of their choice as well as the right to notify a person of their choice.

6. Please elaborate on the legal safeguards protecting the rights of persons in psychiatric institutions, especially with reference to involuntary treatment. Please also inform the Committee about the living conditions of this group of patients in psychiatric institutions and specify what mechanisms exist to prevent and punish acts of torture and ill treatment in such institutions. Please provide information on the number of complaints related to torture and ill-treatment reported.

7. It has been reported to the Committee that:

(a) Caprivi high treason trialists had been held in incommunicado detention and subjected to torture and other cruel, inhuman or degrading treatment especially during the pretrial period.

(b) William Cloete died of suffocation in a shipping container which police in the town of Rosh Pinah used as a detention centre.

(c) Lazarus Kandara and Linus Muhimba died in custody.

Please comment on these allegations and provide information on *Namundjebo et al. v. Commanding Officer, Windhoek Prison, et al.* (2000).

8. According to information provided by the State party in its combined eighth to twelfth reports to the Committee on the Elimination of Racial Discrimination (CERD/C/NAM/12, para. 219), detention of refugees and asylum-seekers is not subject to independent monitoring. Please explain what measures have been taken by the State party to control and monitor the detention of refugees and asylum-seekers, and provide information on the number of complaints concerning torture or ill-treatment received from asylum-seekers, refugees or illegal migrants held in detention. Please further elaborate on the information before the Committee that illegal immigrants are kept in the same cells as convicted prisoners.

9. Please provide clarification about the establishment of a committee on sexual and gender-based violence in the State Party. Please also indicate the measures taken by the State party to prevent, investigate, prosecute and punish acts of violence against women and children, to inform the victims of their rights and to ensure that police station and shelters for victims of violence exist throughout the country, including in rural areas. In this connection, please specify the number of existing shelters and their capacity and provide updated information on the Women and Child Protection Units established by the Namibian Police. Please indicate how cooperation with civil society organizations on combating violence is carried out. In this regard, please explain what has been the impact of the “16 Days of Activism against Gender Violence” campaign organized by the Ombudsman Human Rights Advisory Committee in 2006, and indicate whether similar activities or any other awareness-raising campaigns have been initiated by the State party.

10. With reference to the previous recommendation of the Committee (para. 245), please explain in detail steps undertaken by the State party to introduce measures to reduce the accumulation of criminal cases resulting in long and illegal pretrial detention, which violates the right of defendants to be tried within a reasonable time. Please also provide information on the measures taken to implement the Committee’s recommendation that traditional leaders in community courts in Namibia should either be effectively made to comply with the legal limits of their power to order pretrial detainment of suspects or stripped of their power to order such pretrial detention. Furthermore, please inform the Committee on progress made towards the completion of the draft community courts bill.

### **Article 3**

11. Please provide information on the Extradition Act No. 11 of 1996, and any other new law, policy or measure related to extradition, and indicate how its provisions fully meet the requirements of the Convention. Please also provide information on the number of requests for extradition received by the State party since its initial report, as well as information on cases where the State party proceeded with extradition, return or expulsion and the reasons for such decisions. Please elaborate on cases where extradition, return or expulsion was not carried out and indicate the basis of such decisions. What remedies are in place to appeal cases of expulsion, return or extradition? Are any countries designated as a “safe country”? If so, please explain for what reasons they are considered as such.

12. Please clarify the Refugees Recognition and Control Act No. 41 of 1999 and provide information on its content as regards the definition of refugees and the non-refoulement obligation contained in the Convention. What guarantees and judicial remedies are available under this law against an expulsion or refoulement decision? Please provide the Committee with a copy of this law.

13. According to information provided by the State party (CERD/C/NAM/12, para. 217), “around forty-eight (48) refugees and asylum seekers” were arrested and detained by the immigration authorities and the police in 2006. Most of them were released after UNHCR intervention and following agreement with the Ministry of Home Affairs and Immigration. Please indicate where and for how long these refugees and asylum-seekers were detained and for what purpose. What were the conditions of their detention? Did they have access to a lawyer? What judicial remedies were available? Please indicate whether any complaints of torture or ill-treatment have been received in these cases. Please also indicate how many asylum-seekers and refugees are still in detention and provide detailed information on their conditions of detention.

14. Please provide detailed information on the human rights situation and living conditions of refugees in the Osire Refugee Camp. Please also indicate how many police officers ensure security at the Osire Refugee Camp and explain what remedies are available within the camp to complain in case of torture or ill-treatment. Please also indicate whether there are medical personnel, including medical personnel assigned to identify cases of torture and ill-treatment, in the camp. Please explain the measures taken by the State party to consider applications for refugee status in due time.

15. According to information provided by the State party (CERD/C/NAM/12, para. 222), refugees and asylum-seekers have the right to have access to courts and the Government of Namibia is not aware of any refugee who has been denied this right. Please explain in detail how refugees and asylum-seekers in the refugee camp may fully exercise this right in practice, in particular when they want to complain about ill-treatment or torture.

16. Please provide updated information on the implementation of the Immigration Control Act No. 7 of 1993 and the Departure from Namibia Regulation Amendment Act No. 4 of 1993. Please provide information on the number of:

- (a) Immigrants, asylum-seekers and refugees in Namibia;
- (b) Cases of expulsion or deportation decided by the immigration tribunals;
- (c) Appeals to the Supreme Court;
- (d) Complaints received about torture or cruel, inhuman or degrading treatment during deportations.

17. According to information provided by the State party in its initial report to the Committee (CAT/C/28/Add.2, para. 14), the Minister of Home Affairs may set aside a decision by an immigration tribunal to authorize the expulsion of a person from Namibia. Please provide example of cases where such a decision was taken by the Minister of Home Affairs, specifying in detail the grounds for this decision.

18. Please comment on the information before the Committee according to which the State party had expelled or threatened to expel refugees into the hands of “potential persecutors”. Please also comment on the information before the Committee concerning the safety in 2000 of four men (Jose Domingos Sekunda, Paulo Mendes, Herculano Jornal Satchanga and Bartolomeu Sanguve) who allegedly might be expelled to Angola by the Namibian authorities and allegedly risked being tortured by the Angolan security forces if returned and provide updated information on their situation.

19. With reference to the previous Committee’s recommendation (para. 249), please explain what measures the Namibian authorities have taken to institute proper procedures in order to comply with article 3 of the Convention, i.e., to enable refugees to apply for residence in cases where substantial grounds exist for believing that they would be in danger of being subjected to torture if expelled, returned or extradited to another country.

### **Articles 5, 6, 7, 8 and 9**

20. Please explain what appropriate measures have been taken to fully ensure the universal jurisdiction of the State party over crimes of torture. Please also indicate whether the State party has entered into any treaties on mutual judicial assistance with other countries. If so, please indicate which countries are concerned and provide examples where such mutual agreement has been implemented in cases of offences of torture and ill-treatment.

### **Article 10**

21. Please elaborate on the measures taken to implement the previous recommendation of the Committee that education of members of the Police Department, the National Defence Force, the Prisons Service, other law enforcement personnel and medical officers regarding the prohibition of torture and other cruel, inhuman and degrading treatment should be fully included in their training, in accordance with article 10 of the Convention, with special emphasis on the definition of torture as contained in article 1 of the Convention and also emphasizing the criminal liability of those who commit acts of torture (para. 243). Please submit any relevant training manuals.

22. Please provide updated information on the administrative directives aimed at preventing torture from occurring in the police force laid down by the Namibian police, as well as on their effectiveness and impact since the State party’s initial report.

23. In its initial report to the Human Rights Committee (CCPR/C/NAM/2003/1, para. 130), the State party reported that the Office of the Government Coordinator for Human Rights in the Ministry of Justice, together with the Namibian Police and the Human Rights and Documentation Centre, has started a nationwide human rights training programme for rank-and-file policemen and women. Please provide further information on this initiative in the light of article 10 of the Convention.

24. Please provide information on any other training programmes currently existing for:

(a) Judges and prosecutors, including on the prosecution and punishment of perpetrators of acts of torture in a manner reflecting the gravity of the crime;

(b) All professionals involved in the investigation and documentation of torture or other cruel, inhuman or degrading treatment or punishment on the basis of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Istanbul Protocol”);

(c) Personnel at detention centres or prisons to detect any signs of physical and psychological torture and ill treatment of persons deprived of their liberty.

### **Article 11**

25. Please elaborate on the measures taken by the State party to implement the previous recommendation of the Committee that independent governmental bodies consisting of persons of high moral standing should be appointed to take over the inspection of detention centres and places of imprisonment (para. 244). Please also explain the extent to which the previous recommendation of the Committee to establish an independent authority to deal with complaints against members of the Police Department has been implemented by the State party (para. 244). Please also provide information on the Prison Act No. 17 of 1998 or any other new legislation on prisons and elaborate on its content and implementation.

26. According to information before the Committee, prisons conditions fell below international standards, prisons were overcrowded and inmates lacked access to hygiene products and adequate food. The prevalence of HIV/AIDS in prisons was estimated to be at least high as the national rate of 29 per cent. Please comment on this allegation and provide updated information on the number of persons imprisoned and the occupancy rate of the accommodation for the years 2007-2009. Please also explain the measures taken by the State party to improve the standards of living in prisons in terms of, inter alia, living space in cells, hygienic conditions, nutrition and access to medical services (including for detained persons with HIV/AIDS). Please provide information on the conditions of detention of the Namibian suspects in the Caprivi treason trial.

27. Please explain how far the Prison Act No. 17 of 1998 or any other law relating to prisons has improved the complaints procedure in prisons and indicate the number of complaints for acts of torture, cruel, inhuman or degrading treatment received from prisoners since the initial report of the State party, as well as the follow up given to them. Please specify the number of superior officers concerned. Please also elaborate on the content of the “Code of Conduct for prison members”<sup>1</sup> as well as on progress made towards its adoption, and provide updated information on the implementation of the Discipline Code.

28. Please provide statistical data about the current number of persons held in pretrial detention and specify the duration of the detention and the crime concerned. Please also provide updated information on the number of complaints for torture or cruel, inhuman or degrading treatment received by persons in custody or pretrial detention and the follow-up given. Please

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<sup>1</sup> The State party’s initial report to the Human Rights Committee (2003), CCPR/C/NAM/2003/1, para. 275.

comment on the information before the Committee that common-law criminal suspects have been held in police custody without trial for up to four years.

### **Articles 12 and 13**

29. Please provide detailed information about the specific measures taken by the State party since its initial periodic report to fight impunity and ensure that those responsible for violations of human rights, including torture, or cruel, inhuman or degrading treatment, are brought to justice. Please also indicate, under which specific norms are perpetrators of acts of torture currently prosecuted and inform the Committee about the number of complaints of torture or cruel, inhuman or degrading treatment received against State agents, including superior officers and public authorities, the number of criminal and disciplinary proceedings which were instituted and any sanctions imposed.

30. Please provide information on the Criminal Procedure Act No. 25 of 2004 and indicate, with reference to the previous recommendations of the Committee (paras. 252 and 247), the measures taken by the State party to:

- (a) Separate disciplinary proceedings from criminal procedure;
- (b) Investigate the specific allegations of ill-treatment which have been brought to the attention of the Committee and transmit the results of such investigations;
- (c) Promptly and impartially investigate all the cases of disappearance of former members of the South West Africa People's Organization (SWAPO) and bring to justice the perpetrators of those acts.

31. According to information before the Committee:

- (a) There is "compelling evidence" that certain witness in the Caprivi case have been subjected to torture;
- (b) Mass graves were reportedly discovered in northern Namibia and southern Angola, apparently containing the bodies of people unlawfully killed between 1994 and 2002 by Namibian and Angolan security forces. Suspected supporters of the Angolan armed group the National Union for the Total Independence of Angola (UNITA), were allegedly targeted by the security forces, particularly in the late 1990s and in early 2000.

Please comment on these allegations and indicate the measures taken by the State party to ensure that complainants and witnesses are protected from all ill-treatment or intimidation and undertake effective and independent investigation on the allegation of mass graves, in particular as regards acts of torture or cruel, or inhuman and degrading treatment that might have been occurred in this case.

### **Article 14**

32. What measures have been taken to implement the recommendation of the Committee that victims of torture in Namibia be given standing to institute, apart from civil action for damages, criminal procedures against the perpetrators of torture? Please inform the Committee on redress,

compensation including rehabilitation measures provided to victims of torture or to their families since the examination of the initial report and elaborate on the Legal Aid Act No. 29 of 1990, as amended by the Legal Aid Amendment Act No. 17 of 2000, as well as on the Directorate of Legal Aid. Please explain in detail what has been their effective impact on the concrete improvement of victims' rights. With reference to the previous recommendation of the Committee concerning the cases of disappearance of former members of SWAPO (para. 247), please explain what measures have been taken to ensure that in all situations where there are reasonable grounds to believe that those disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependants of the deceased victims are afforded fair and adequate compensation, as per article 14 of the Convention.

### **Article 15**

33. According to information before the Committee evidence obtained under torture has been presented to the High Court in the Caprivi case. Please comment on this allegation and provide information on the measures adopted to implement the principle set out in article 12, paragraph 1 (f), of the Constitution of the State party that evidence obtained under torture is not admissible. Please also indicate whether this prohibition has been integrated in the Criminal Procedure Act No. 25 of 2004 or any other legislation.

### **Article 16**

34. According to information provided by the State party in its report to the Committee on the Elimination of Discrimination against Women (CEDAW/C/NAM/2-3), rape is a matter of serious concern in Namibia. Civil society organizations have termed the high level of child rapes a national emergency. Please provide information on the Combating of Rape Act No. 8 of 2000, as well as on any other law, policy or measure taken by the State party to eliminate sexual violence against women and children. Please also provide statistical data disaggregated by age and gender on the number of reported cases of rape, number of investigations, prosecutions and convictions. Please also provide information on the Domestic Violence Act No. 4 of 2003 and indicate the measures taken by the State party to implement it.

35. Please provide detailed information on the allegation of rape against San women and the two cases of rape reported in the Osire Refugee Camp in 2006. Please explain in detail what measures the State party has taken to investigate and prosecute the perpetrators and provide these women with adequate remedies and compensation, including rehabilitation and psychological recovery services.

36. According to information before the Committee, children do not get the type of special protection that they require in the area of the administration of justice, in particular in the criminal justice system. It has also been reported to the Committee that juveniles are held together with adult offenders and that a mentally handicapped 16-year-old boy has been a victim of sexual assaults while locked up with adult convicts in Windhoek Central Prison. Please comment on these allegations and explain what measures the State party has taken to establish an appropriate juvenile criminal justice system. In this relation, please indicate whether the State party has adopted a legislation or policy on juvenile justice, in particular clarify the information relating to the adoption of a child justice bill.



37. Please provide clarification on the juvenile justice forums, the Arrest and Awaiting Trial Committee, as well as the Inter- Ministerial Committee on Juvenile Justice. The State party has reported in its initial report to the Human Rights Committee (CCPR/C/NAM/2003/1, para. 273) that a new prison is under construction at Rundu, which will be the only prison in the country for juveniles. Please provide updated information on progress made towards the construction of this prison and indicate whether the construction of a remand home for juveniles is envisaged by the State party.

38. Please provide information and statistical data on the extent of human trafficking from and within the State party and indicate whether the State party has adopted legislation or any other measure to criminalize human trafficking, especially that of women and children. Please provide updated information on the case reported by the State Party concerning the transport of two young Namibian girls to South Africa for the purpose of sexual exploitation and comment on the information before the Committee according to which Zambian and Angolan children were trafficked to Namibia for domestic servitude, agricultural labour and livestock herding. In its initial report to the Human Rights Committee (CCPR/C/NAM/2003/1, para. 107), the State party stated that some commercial farmers still employ workers under slavery conditions. Please provide further detail on this information and indicate the measures taken to address this situation.

39. Please explain the measures taken by the State party to implement the recommendation of the Committee to abolish corporal punishment and indicate what steps have been taken by the State party to protect the rights of Human Rights defenders.

#### **Other issues**

40. Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threats of terrorism, and please indicate if, and how, these have affected human rights safeguards in law and practice. Please provide information on the stage at which the enactment of the anti-terrorism bill is at present. Does this legislation comply with the requirements of the Convention and with the State party obligations under international human rights laws?

41. Please provide information on steps undertaken by the State party to make the declaration under article 22 of the Convention.

42. Please provide detailed information on any difficulties preventing the State party from fully implementing the provisions of the Convention and the Committee's previous recommendations. Please indicate the measures that have been taken to widely disseminate the Convention, as well as the Committee's conclusions and recommendations and the written answers of the State party to the Committee's oral questions, in all appropriate languages in the State party, including through the media and non-governmental organizations. Please indicate how civil society organizations have been involved in the preparation of the report.

43. Does the State party envisage ratifying the Optional Protocol to the Convention? If so, has the State party taken any steps to set up or designate a national preventive mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

44. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the initial periodic report, including any relevant jurisprudential decisions.

45. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the initial periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

46. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial periodic report in 1997 including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.

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