



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

Distr.: General
23 November 2016

Original: English

Committee against Torture Fifty-ninth session

Summary record of the 1481st meeting

Held at the Palais Wilson, Geneva, on Monday, 21 November 2016, at 3 p.m.

Chair: Mr. Heller Rouassant (Vice-Chair)

Contents

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

Second periodic report of Namibia (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.16-20748 (E) 231116 231116



* 1 6 2 0 7 4 8 *

Please recycle A recycling symbol consisting of three chasing arrows forming a triangle.



In the absence of Mr. Modvig (Chair), Mr. Heller Rouassant (Vice-Chair) took the Chair.

The meeting was called to order at 3 p.m.

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

Second periodic report of Namibia (continued) (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), replying to questions raised at the 1478th meeting, said that allegations made by a human rights organization in Namibia to the effect that mass graves reportedly found in Namibia contained the bodies of civilians killed by the Namibian Government were untrue. During the 24-year war of national liberation fought by Namibia, it was the South African occupying troops that had committed massacres in 1968, 1969, 1972, 1982 and 1988 in Namibia. Two other massacres had been perpetrated by those troops against Namibian refugees in Zambia in 1976 and against more than 600 Namibian refugees, mostly women and children, in Cassinga, Angola, in 1978.
3. With regard to the Caprivi high treason case and allegations of torture having been committed by the Government against the defendants awaiting trial, he wished to clarify at the outset that the Namibian Government did not condone torture in any form. As part of the Caprivi region secessionist attempt, a police station had been attacked by rebels, on 2 August 1999, and police officers and innocent civilians had been killed by assailants. The Government could not deny that a few incidents of alleged torture by some members of the Namibian Police Force had been registered during the arrest of accused persons in the Caprivi case.
4. With regard to the civil suits for unlawful detention that had been brought by detainees who were implicated in the Caprivi cases, some had been dismissed, a large number had been settled out of court and compensation had been paid to 77 persons. Private-sector lawyers had been hired by the Government to defend the plaintiffs, despite their association with the secession attempt, which was a demonstration of the impartiality of Namibian justice and the fact that Namibia was a law-abiding country founded on the rule of law. Of the civil suits filed, 11 had been dismissed and 57 claims of unlawful detention were currently pending before the High Court of Namibia.
5. Namibia had been one of the first countries to sign the Rome Statute of the International Criminal Court and had subsequently ratified it. However, the Government, like the Governments of certain other African countries, had been disappointed to note, a discriminatory trend in the Court, in that all defendants being prosecuted for human rights abuses and genocide were from African countries — that despite the fact that there were many other conflicts elsewhere in the world which had resulted in large numbers of civilians being subjected to human rights abuses or to genocide. Yet the perpetrators of those violations were not brought before the Court.
6. As part of a delegation from the African Union, he had travelled to New York to meet with permanent members of the United Nations Security Council in order to express dissatisfaction about the politicization of the Court. However, despite that meeting, the delegation's concerns had been completely disregarded.
7. Namibia had not yet sent notification of withdrawal from the Rome Statute, but it was actively engaged in efforts within the African Union to establish an impartial and independent African institution to bring perpetrators of human rights abuses and genocide

to justice. Any future decision it might take in that context would reflect decisions made at the level of the African Union.

8. There were currently 4,505 refugees in Namibia. The country was receiving approximately 15 refugees a week from the Democratic Republic of the Congo, and the current total number of refugees from that country was 2,525. The Government had taken a decision to resettle Angolan refugees who were unwilling to return to Angola for fear of imprisonment; some had been granted citizenship and some permanent resident status.

9. An initial political decision to accede to the Optional Protocol to the Convention against Torture had been adopted and was pending confirmation by Parliament. Namibia was still considering whether to make the declaration under article 22 of the Convention.

10. The Government of Namibia did not condone torture. Following national independence in 1990, it had successfully brought together warring parties to form the Namibian Police Force and the Namibian Defence Force. The latter was a very effective, professional force that had proved itself capable of maintaining peace and stability in the region.

11. The budget of the Ombudsman's Office had been increased in an effort to strengthen its capacity. The Office submitted annual reports to Parliament and made recommendations to line ministries for action on specific issues of concern. Namibia was a developing country with limited resources; for the last three years, it had been affected by one of the most severe droughts in living memory, which had resulted in budget cuts in all offices, ministries and agencies as resources had been redirected to drought relief. Thus, despite the fact that the Government valued the recommendations of the Ombudsman's Office, some of them remained pending as a result of such financial constraints.

12. With regard to the inspection of places of detention, the Correctional Services Act, 2012 provided that visiting justices and ministers of religion could conduct unannounced visits to all correctional facilities in the country in order to acquaint themselves with conditions of detention in those facilities. Because of its mandate to investigate complaints of human rights abuses, the duties and functions of the Ombudsman's Office, as set out in the Ombudsman Act, also included visiting places of detention.

13. The Government had embarked upon initiatives to build two additional correctional facilities, and the transfer of sentenced inmates took place on a regular basis in order to provide better accommodation where more space was available. Medical care was provided for inmates in correctional facilities, and nurses, and where possible, doctors were stationed on the premises. Where necessary, prisoners were taken to the nearest health centres, health facilities or hospitals for treatment.

14. According to article 12 of the Constitution, all accused persons had the right to a fair trial and to legal representation. They were informed of those guarantees at the time of arrest and at the time of their first court appearance. If the High Court found that that process had not been duly followed, it could refer any case back to the relevant magistrate's court on review to ensure that the proper procedures were observed. The High Court had set down the format to be used to inform accused persons of their rights under the Constitution, and the lower courts were now complying with that directive.

15. There were plans to build a new psychiatric hospital in Nankudu, Kavango West region, and another was scheduled for construction in the southern part of the country. A number of legal safeguards were set forth in the Mental Health Act, 1973 that protected the rights of persons in psychiatric institutions. Anyone over the age of 18 who believed that another person was suffering from mental illness to such a degree that the latter should be committed to an institution could apply to the magistrate of the relevant district for an order for the person to be institutionalized. Such a patient could not be detained in a prison or

police cell unless it was impossible to transfer him or her immediately to an institution or place of detention as a single patient and it appeared to the magistrate that the person could not be controlled otherwise.

16. The case of *B. Goreseb and A. Gawanab v. The State* had laid down new guidelines, according to which, if a court ordered the release of such a person by a specified date, any detention beyond that date constituted wrongful detention. In the aforementioned case, the Supreme Court had awarded damages to the plaintiff.

17. With regard to the *Namundjebo et al. v. Commanding Officer, Windhoek Prison* case, he said that the law at the time had allowed the chaining of dangerous prisoners; the prison officials had therefore acted lawfully. Following the High Court decision in that case the law had been amended to prohibit chaining.

18. Under the Namibian criminal justice system the prosecutor represented the State and the presiding magistrate or judge handed down judgments. Serious road traffic cases must be brought to court but for minor offences the accused could choose whether to admit guilt and pay a fine or appear in court. In cases involving trafficking of persons only the magistrate or judge could impose fines. Human trafficking was criminalized under the Prevention of Organized Crime Act, 2004. A bill dealing specifically with the prevention of such trafficking had been approved by Cabinet and would be submitted to Parliament early in 2017.

19. He did not know why the Governments of Zambia and Botswana had allegedly forced Namibians to return to Namibia; as Namibian citizens those persons had the right to return in any case. The Southern African Development Community Protocol on Extradition prohibited extradition if the individual would be at risk of torture or cruel, inhuman or degrading treatment. Domestic legislation and a bill to be presented to Parliament contained similar provisions. The Extradition Act, 1996 prohibited the return of a person to a State where that person would risk the death penalty, torture or inhuman or degrading treatment. The Act likewise specifically prohibited refoulement if that would be in conflict with Namibia's obligations under any international instrument.

20. His Government provided support to ensure the well-being of refugees in its territory, most of whom were housed in the Osire Refugee Camp where they were provided with food and basic necessities, including access to education and health care; the salaries of teachers and health personnel were paid by the Government. Although Namibia had not yet ratified the African Refugee Convention, Cabinet had given its approval for such ratification. With regard to statelessness, he said that article 4 (1) (d) of the Constitution prohibited children born to illegal immigrants from being considered stateless.

21. Information on the number of complaints against the police would be provided in writing. His Government would study the possibility of creating a mechanism to ensure independent and impartial investigations of complaints against the police that would include non-police members. The Ombudsman also could investigate and had investigated police misconduct, which had led to prosecutions. A copy of the police training manual prepared by the Ombudsman had been provided to the Committee; police training included the prevention of torture. The Namibian Police Force had launched a multimedia public awareness-raising campaign on prevention of torture with funding provided by the Federal Republic of Germany. As for the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), he said that a new law on torture would soon be tabled in Parliament and legislation would continue to be updated in consultation with stakeholders. Domestic institutions were currently more than capable of addressing any grievances. His Government was, however, ready to incorporate additional measures into domestic law if the need arose.

22. Inmates in correctional facilities had access to medical care including in hospital if necessary. Namibia was one of the most successful countries in Africa in regard to implementation of World Health Organization recommendations concerning HIV/AIDS and antiretroviral treatment. All persons in Namibia, including prison inmates, had free access to antiretroviral treatments regardless of their CD4 cell count. The first class of doctors had graduated from the recently established School of Medicine at the University of Namibia. Over time the graduates of the School would help relieve the shortage of medical personnel in the country.

23. The distribution of condoms in prisons was a sensitive cultural and religious issue. There was significant resistance among the population, which was 90 per cent Christian. As Minister of Justice, he had consulted the Ombudsman and come to an agreement that extensive consultations with stakeholders would be necessary before taking a final decision. He hoped that the Ombudsman would provide financial support for such consultations, which might lead to a referendum to gauge the mood of the people.

24. The Constitution had been amended in 2014 to strengthen the independence of the judiciary. The Chief Justice was the head of the judiciary, which was an autonomous body with its own budget and staff. International and national experts had provided training sessions on the Constitution, domestic legislation and human rights, including the prevention of torture, to interpreters and magistrates and judges at all levels.

25. In an effort to reduce the scale of gender-based violence his Government intended to amend the 2003 Combating of Domestic Violence Act in early 2017 with a view to increasing penalties for offences under the Act and facilitating the granting of protection orders to victims, in particular women and children. The amendments would make it possible for a victim to obtain a protection order at any time, any day of the week. Social workers from the Ministry of Gender Equality and Child Welfare provided support to vulnerable witnesses. Several multimedia public awareness campaigns, for example “Spot It To Stop It”, had been launched; a national protection referral flow chart had been developed by key ministries in cooperation with civil society. The coordination mechanism for the implementation of the national gender policy included a gender-based violence and human rights cluster, made up of representatives from government, law enforcement, NGOs and development partners, which provided advice to the government and stakeholders on how to root out gender-based violence. A second National Conference on Gender-Based Violence had been held in July 2014. The conference had been broadcast live across the country and had featured a keynote address from the President and messages from all faith-based organizations.

26. With regard to the 16 HIV-positive women who had taken the Government to court claiming that they had been sterilized without their informed consent at State health-care facilities, he recalled that in July 2012 the High Court had found in favour of three of the women, who had received compensation from the Government. Since that decision the Ministry of Health and Social Services had issued guidelines on family planning methods and sterilization which included specific stipulations relating to women who were HIV-positive.

27. Victims of a crime, including rape, were entitled to compensation under the Criminal Procedure Act, 1977. He believed that there was some misunderstanding with regard to settlement of criminal complaints out of court through customary law, which was recognized in article 66 of the Constitution. Customary law emphasized compensation for victims whereas statutory law placed more emphasis on custodial sentences. It was up to the victim to choose which legal system would handle their complaint.

28. There was also some misunderstanding about cultural practices, although some were indeed harmful. He stressed that initiation ceremonies for girls, for example the Olufuko

Festival, were voluntary. The girls had to be 18 and were taught to abstain from sex while they were still in school and concentrate on their education. In case they did not abstain, they received information on family planning to protect against unwanted pregnancies so that they could finish school. The ceremonies were therefore intended to protect the girl, in response to the high teenage pregnancy rate among schoolgirls. In that regard he was proud to say that there were actually more girls than boys enrolled in primary education and that 60 per cent of higher education graduates were girls.

29. Prostitution was a criminal offence in Namibia. In addition to local prostitutes, women from other countries had entered Namibia, sometimes illegally, for the purpose of prostitution, attracted by the growing tourism sector. The delegation had taken note of the concerns expressed by the Committee and would raise them with stakeholders, including the police and the Ombudsman, in order to investigate the situation, in particular involvement by public officials.

30. The Ministry of Justice was finalizing a child justice bill for adoption by Parliament in 2017. The bill provided for alternative programmes for juvenile offenders aimed at making them contributing members of society. Placing juveniles in custody was a last resort.

31. With regard to the William Cloete case, which was still pending in court, he said that the three police officers involved had been arrested and charged with culpable homicide.

32. With respect to corruption in the Namibia Correctional Service, he said that while no country or institution was entirely corruption-free, according to African Economic Outlook, Namibia was the second least corrupt country in Africa while Transparency International had rated Namibia the 45th least corrupt country in the world. In an effort to ensure transparency and prevent corruption, public figures including the President and First Lady, Ministers and members of Parliament had to declare their assets and have them audited. Civil servants likewise had to declare their assets. His Government would continue to monitor corruption in the public and private sectors and adopt remedial measures where necessary, including with regard to the Correctional Service, in accordance with domestic legislation. He hoped that in the future Namibia would be rated the least corrupt country in Africa.

33. The Inter-Ministerial Committee on Human Rights and International Humanitarian Law, established in 2010, was responsible for drafting State reports in consultation with the Office of the Ombudsman, civil society and NGOs. The finalized report was then approved by Cabinet.

34. **Mr. Hani** (Country Rapporteur) commended the State party on its continued commitment to fighting corruption and on choosing not to withdraw from the International Criminal Court. He said that the armed conflict could not serve as an excuse for all the situations of concern to the Committee, particularly given that a number of them had arisen after the end of the war. Fair, long-term peace could not be achieved without justice. He asked whether the recent admissions by the chief of police that some of the people involved in the Caprivi cases had been tortured had led to any new investigations. When might the planned reforms of investigative bodies take place? The torture prevention bill was very good, but many provisions mentioned only torture and omitted ill-treatment, which could lessen the protection afforded by the law. He requested confirmation that, under the bill on extraterritorial jurisdiction, the Attorney-General had discretionary power over whether or not to initiate proceedings against a foreign criminal found in Namibia.

35. He also asked whether all the refugees in Namibia had official status, whether any asylum seekers from the Democratic Republic of the Congo had been returned to that country and whether there was a mechanism to conduct case-by-case assessments of the risk of torture run by asylum seekers whose applications were denied. He wished to know

whether asylum seekers who held a refugee certificate issued by the Office of the United Nations High Commissioner for Refugees (UNHCR) were effectively protected against expulsion.

36. Stressing the importance of establishing a coordination system between the Office of the Ombudsman and government authorities, he said that it would be helpful to know which of the Office's recommendations had not been implemented for lack of resources. He asked whether the Office had conducted visits to psychiatric institutions and what recommendations had stemmed from those visits. Noting with surprise that the State party would hold a referendum on such an urgent matter as the spread of HIV/AIDS in prisons, he asked what emergency measures were being taken in that connection. He pointed out that punishing rapists and providing reparation to victims should not be mutually exclusive.

37. **Ms. Pradhan-Malla** (Country Rapporteur) noted that many of the Committee's questions remained unanswered and that it was not necessary to ratify the Istanbul Protocol given that it was a manual, not a binding instrument. She drew the delegation's attention to a contradiction between paragraph 111 of the report and its own comments regarding human rights training for the judiciary. She said that the individual complaints mechanism and the Optional Protocol to the Convention were completely independent from each other; therefore, not being a party to the Optional Protocol was not a valid argument for not recognizing the Committee's competence under article 22. She asked whether civil society was involved in monitoring the implementation of the Convention and not solely in the preparation of the report, and what plans there were to engage the judiciary and Parliament in the process as well.

38. She repeated her request for data on the number of prisoners living with HIV/AIDS and their access to antiretroviral drugs and said that, while she understood that it was a sensitive matter, people's lives should not be endangered for the sake of religious beliefs. Referring to the forced sterilization of persons with HIV/AIDS, she asked what steps had been taken to meaningfully investigate such cases and hold the perpetrators accountable. She also asked whether the anti-torture bill had been submitted to Parliament and what role the Ministry of Justice would play in its enactment. She wished to know whether the improvements made to correctional facilities included the establishment of centres for juveniles so as to keep young offenders separate from adults and to what extent the Children's Act No. 33 of 1960 was being enforced.

39. She asked whether out-of-court settlements were really applied in the case of rape and what specific compensation had been provided to victims of rape. It would be useful to know whether the State party was considering decriminalizing prostitution and what action was taken when the perpetrators of abuse against sex workers were police officers. Given the prevalence of impunity, she enquired about efforts to build public confidence in the authorities and the justice system.

40. **Mr. Bruni**, referring to paragraph 82 of the report on the power of the Minister of Home Affairs and Immigration to detain or expel refugees, recalled that the Convention against Torture, unlike the Convention relating to the Status of Refugees, did not permit the expulsion of any individual who faced danger in the country to which deportation was envisaged, even if that individual posed a threat to the host country. Accordingly, he asked how the Government intended to reconcile the Refugees (Recognition and Control) Act, 1999 with the country's international obligations regarding the principle of non-refoulement.

41. **Ms. Belmir** said that, while she commended the State party on its efforts to consolidate the rule of law, concerns remained with regard to the authorities' discretion to decide whether or not to enforce judicial decisions. She recalled that neither torture nor trafficking were defined under the State party's criminal law and that setting the age of

criminal responsibility at 16 was contrary to the Convention on the Rights of the Child. She asked whether the State party had extended a standing invitation to all the special procedures mandate holders.

42. **Mr. Hani**, referring to Namibian nationals who had been returned from Zambia and Botswana, said that there was a difference between their right to return to their country of origin of their own accord and their right to be protected from expulsion from their host country. He asked how asylum applications were filed and processed now that UNHCR had pulled out of the country. Citing the example of sexual initiation ceremonies for young girls, he also asked how the State party distinguished between cultural practices that were harmless and those that undermined human dignity and violated human rights. Lastly, he asked whether the State party intended to implement the recommendations on new investigation techniques, especially with regard to interrogation methods, contained in the latest report of the Special Rapporteur on torture (A/71/298).

The meeting was suspended at 5 p.m. and resumed at 5.30 p.m.

43. **Mr. Kawana** (Namibia) said that 77 victims of torture had received compensation from the Government in relation to the Caprivi high-treason case. Following the conclusion of the trial, some of those discharged or acquitted had sued the Government for malicious prosecution and unlawful detention. They had originally been defended at the expense of the State in the criminal trial and their legal counsel continued to be paid for by the Government. The matter was still pending before the courts.

44. With regard to concerns raised about issues prior to Namibian independence, he recalled that, during the 24-year national liberation war, families had been divided on either side of the conflict, with some members supporting independence and others, South African apartheid rule. Massacres had been perpetrated by South African forces and mercenaries and there had been many disappearances. The Government was of the view that there was nothing to be gained from reopening wounds that had been healed, as doing so would provoke instability, potentially creating the conditions for civil war. It would not be appropriate to hold only one party to the conflict to account. The country's seven political parties, including those that had sided with the apartheid regime, had unanimously agreed that national reconciliation was the way forward, and that was provided for in the preamble to the Constitution, which had been drafted not by the departing colonial masters but by a constituent assembly. Amnesty had been granted to both sides in the conflict, in accordance with United Nations Security Council resolution 435 (1978). The war was considered a part of history and a new Namibia had been built.

45. With regard to refugees from the Democratic Republic of the Congo, none had ever been returned to their country of origin. If a refugee or asylum seeker was considered to pose a threat to national security, efforts were made to find a third country prepared to take in the person concerned. The Immigration Selection Committee was responsible for hearing asylum applications and taking decisions on the granting of refugee status. Its decisions were subject to review. The authorities cooperated with the UNHCR in that area.

46. It was difficult to provide statistics on the proportion of recommendations made by the Ombudsman that were implemented. However, meetings were held periodically between the Ombudsman's Office and a range of government ministries and agencies to coordinate activities and address outstanding aspects of the Ombudsman's report. Topics currently being debated included whether to decriminalize prostitution and sodomy. There was a need for broad consultation among all stakeholders, including faith-based organizations, so as to ensure that any legislative steps taken would be successful and their implementation would not be met with resistance from certain quarters. The Constitution provided for the possibility of holding a referendum on such issues, although that stage had not yet been reached.

47. Rape was considered a very serious offence and, once an allegation of rape was brought to the attention of the authorities, the alleged perpetrator was immediately arrested by the police. However, the problem was that, in such a traditional society, many victims and their families were reluctant to report rape to the police and instead chose to reach secret settlements with the perpetrator in accordance with customary rules.

48. **Ms. Pickering** (Namibia) said that the definition of rape contained in the 2000 Combating of Rape Act, a copy of which had been circulated to the Committee members, was very comprehensive and progressive. The Act provided that any person who intentionally under coercive circumstances committed or continued to commit a sexual act with another person or caused another person to commit a sexual act with the perpetrator or with a third person was guilty of the offence of rape.

49. **Mr. Kawana** (Namibia) said that the issue of extraterritorial jurisdiction and the power of the Prosecutor-General would be addressed under the new bill that would be prepared by the Ministry of Justice. The concern raised with regard to the omission of a reference to ill-treatment in the bill would be taken into account. In fact, the drafters of the legislation would welcome a specific written recommendation from the Committee on the points that should be incorporated in that regard. When it came to training for judges on human rights and torture, chapter 3 of the Constitution on the protection of fundamental rights and freedoms, including the prohibition of torture, was particularly relevant. He would appreciate clarification of the concern raised by a Committee member in respect to visiting the State party, particularly as very recently he himself had welcomed representatives of the Human Rights Committee on an official visit to Namibia.

50. **Ms. Pickering** (Namibia) said that the State party had taken note of the recommendation made by several States during the universal periodic review earlier in 2016. As a member of the Human Rights Council, Namibia attached great importance to the work of the special procedures mandate holders and had welcomed three mandate holders to Namibia since its previous universal periodic review, namely the Special Rapporteurs on the human right to safe drinking water and sanitation, on the rights of indigenous peoples and on extreme poverty and human rights. The reports on those visits had been presented to the Human Rights Council. Namibia remained open and willing to consider any visits by the mandate holders in future.

51. **Mr. Kawana** (Namibia) said that, in the case of the Ugandan individual, his nationality was not actually clear. He had arrived in Namibia as a stowaway on a ship from the Caribbean, and had remained in the country illegally until he had been discovered by the authorities, at which point he had claimed to be from Uganda. In any event, he had eventually settled in Canada.

52. **The Chair** thanked the delegation for the constructive dialogue with the Committee.

The meeting rose at 6 p.m.