



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

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Summary record of the 2143rd meeting*

Held at the Palais Wilson, Geneva, on Thursday, 31 October 2024, at 3 p.m.

Chair: Mr. Heller

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* No summary record was issued for the 2142nd meeting.

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

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

Third periodic report of Namibia (continued) (CAT/C/NAM/3; CAT/C/NAM/Q/3)

1. *At the invitation of the Chair, the delegation of Namibia joined the meeting.*
2. **A representative of Namibia** said that states of emergency had been declared in her country as a result of the coronavirus disease (COVID-19) pandemic, natural disasters such as drought and a secession attempt. Not once had the Government suspended the prohibition on torture. For it to have done so would have been unconstitutional.
3. Persons convicted of terrorist activity, which was defined in the Prevention and Combating of Terrorist and Proliferation Activities Act of 2014, could be given life sentences. Proliferation, as defined in the Act, involved activities such as the manufacture, acquisition, possession, transport, supply or use of any kind of weapon capable of causing mass destruction.
4. All laws must be implemented against the backdrop of the constitutional protection against torture. There could be no derogation from the prohibition on torture contained in article 8 of the Namibian Constitution. In recent counter-terrorism training sessions attended by law enforcement and other relevant officials, the obligation to respect human rights and the rule of law while combating terrorism, radicalization and violent extremism had been reinforced.
5. The definition of torture in the Prevention and Combating of Torture Bill was identical to that in article 1 of the Convention. The definitions of cruel, inhuman or degrading treatment or punishment, too, were similarly aligned. What was more, all those definitions appeared in the police training manual on the prevention of torture. The courts had recognized – in the case *McNab and Others v. Minister of Home Affairs*, for example – the distinction between torture and cruel, inhuman or degrading treatment or punishment. In parliamentary deliberations, concerns had been raised about the prison sentences prescribed in the Bill and the Bill’s definition, too narrow for some, of the term “public officials”.
6. The determination of the age of criminal responsibility provided for in the Child Justice Bill had been made after careful consideration of the domestic context and broad consultations with all stakeholders.
7. Concerning the direct application in the national legal system of international legal instruments to which Namibia was a party, the Convention had been invoked in a 1999 judgment in which the Supreme Court had found in favour of the appellants, Windhoek Prison inmates.
8. The expulsion of a recognized refugee under section 24 of the Refugee Recognition and Control Act of 1999, a necessary section, took place only in the interests of sovereignty, territorial integrity, national security, public order, decency or morality. Due process of law, which involved notifying the refugee of the expulsion order and giving him or her an opportunity to make representations before the Namibia Refugees Committee, had to be followed before the order could be executed. Under section 26 of the Act, no refugees could be refused entry, whether they had arrived in Namibia lawfully or unlawfully, where such refusal would compel them to return to a country where they might be subjected to persecution or their lives might be threatened.
9. Under the Harambee Prosperity Plan (II), the Government had been tasked with regularizing the situation of stateless and undocumented persons. Relevant bills that had been approved in principle by the Cabinet included bills on civil registration and identification, statelessness determination and protection, and regularization. Bills containing proposed amendments to refugee and citizenship laws had also been approved by the Cabinet. The Government was prioritizing the development of national laws before considering accession to related regional and international conventions.
10. The two individuals whose alleged disappearances had prompted the Working Group on Enforced or Involuntary Disappearances to request information from the Namibian

authorities had turned out to be Namibian nationals of Angolan descent who were believed to have returned to Angola. Those two cases were thus considered closed. Under the amnesty proclaimed in 1989, the institution or continuation of any criminal proceedings against any persons who had been ordinarily resident in the country or born in the country and entered the country after the commencement of the proclamation, in respect of any criminal offence committed by such person before that date, had been prohibited. In addition, the people's determination to achieve national reconciliation was highlighted in the preamble to the Constitution. Revisiting the sensitive issues addressed in the amnesty and the preamble to the Constitution could have far-reaching consequences. Discussion of those issues was best left to the people of Namibia.

11. The police training manual on the prevention of torture and the curriculum for prospective police officers were informed by the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). In-service training was provided to help officers develop the skills to establish the facts relating to alleged incidents of torture with a view to identifying those responsible for the incidents and facilitating their prosecution or for use in the context of other procedures designed to obtain redress for victims. Officers read suspects their rights and were trained not to use coercion or force to obtain information.

12. Corporal punishment, which had been found unconstitutional by the Supreme Court, was prohibited. In accordance with the Basic Education Act of 2020, corporal punishment in school settings included spanking, slapping or pinching anywhere on the body of a learner, with or without a tool such as a cane or other similar device. The adoption of the Zero Tolerance for Corporal Punishment Policy (2018) mandated schools to create mechanisms to allow learners to report incidents of corporal punishment; schools were expected to report periodically on the complaints received. In August 2024, a teacher had been relieved of his duties for having disregarded the prohibition on corporal punishment. Corporal punishment in the home was prohibited pursuant to section 228 (1) of the Child Care and Protection Act of 2015.

13. The Cabinet had in principle approved amendments to the Legal Aid Act of 1990, proposed with a view to meeting the growing demand for legal representation. The mental health bill that was expected to be put before Parliament in 2025 made extensive reference to the non-coercive techniques that were to be preferred to the coercive methods, such as seclusion and restraint, that were often relied on in her country's mental health facilities. When the bill was made law, coercive methods, on which there would be a time limit, would be used only to prevent harm. The sterilization of women with psychosocial disabilities would also be prohibited.

14. **Mr. Iscan** (Country Rapporteur) said that he would welcome examples of cases in which statements established to have been made as a result of torture had been declared inadmissible by the courts. He wished to know whether the authorities had investigated claims that evidence admitted during the criminal trials of alleged secessionists in March 2019 had been obtained as a result of torture and, if so, what the outcome of the investigations had been.

15. **Mr. Contesse** (Country Rapporteur) said that he wondered whether the State party's courts had ever convicted anyone on charges of torture, not simply assault or another such offence, and, if so, whether they had drawn on the Convention in so doing. He wondered, too, what features of the domestic context prevented the State party from making the age of criminal responsibility 14 rather than 12.

16. It would be helpful to know why the State party was of the view that section 24 of the Refugee Recognition and Control Act was necessary. Information on the investigations opened into the allegations of sexual abuse and exploitation of refugees by public officials or non-governmental workers at the Osire refugee camp, in particular the allegations against the camp's former police commandant, would be welcome. The delegation might also comment on living conditions at the camp, which were reportedly poor.

17. He would appreciate an explanation of the lack of resources for implementation of the national action plan to combat trafficking in persons, as well as the low number of reported

cases, the slow progress of the investigations into those cases and the low rate of convictions for trafficking in persons.

18. If he had understood correctly, the Office of the Ombudsman did not make unannounced visits to places of detention simply as a matter of practicality. If that was indeed the case, he wondered whether the State party might consider bringing the arrangements for visits by its national mechanism for the prevention of torture into line with international standards.

19. **Mr. Kessing** said that, given the large number of pretrial detainees in Namibian prisons, he would be interested to know whether the State party imposed a limit on the length of pretrial detention and, if not, whether it would consider doing so. He would be grateful to receive clarification as to whether the use of solitary confinement had been deemed unconstitutional in Namibia.

The meeting was suspended at 3.45 p.m. and resumed at 4.20 p.m.

20. **A representative of Namibia** said that cases in which courts had found evidence to be inadmissible on grounds of its having been obtained in a manner inconsistent with the Namibian Constitution were referred to in the third periodic report (CAT/C/NAM/3). Courts typically determined whether or not evidence was admissible in a trial within a trial after preliminary investigations had been conducted. When evidence was found to be inadmissible, additional investigations were conducted and further proceedings could be initiated depending on the outcome.

21. Section 24 of the Refugee Recognition and Control Act, which provided for the possibility of expelling refugees and protected persons, had been put in place to protect the national security of Namibia and was not intended to subvert the principle of non-refoulement. It was unreasonable to expect States not to expel persons whose presence posed a threat, and such persons were not expelled from Namibia without due process.

22. Her Government was committed to raising awareness of the issue of trafficking in persons and to addressing limitations in relation to court infrastructure and personnel in order to increase the rate at which that offence was investigated and prosecuted. The conviction rate was dependent on the evidence that was presented before the courts.

23. The Namibian authorities had been unable to find any information pertaining to a sexual assault case against the former police commandant of the Osire refugee camp. Members of the refugee community were also members of Namibian society. Accordingly, any allegations of sexual assault or other offences against the refugees at the camp would have been investigated. The delegation was unaware of any issues pertaining to living conditions at Osire refugee camp. However, there was sufficient institutional capacity in Namibia for any problems of that nature to be investigated and for the relevant authorities to address them.

24. Various efforts were being made to reduce periods of pretrial detention and the number of pretrial detainees, notably by tackling the backlog of cases pending trial. In addition to proposed amendments to the Legal Aid Act to increase access to legal representation, the Ministry of Justice was taking steps to establish and strengthen community courts, which was likely to reduce pressure on the civil court system. A small claims court was also being introduced.

25. While unannounced visits by the Office of the Ombudsman to places of detention did not currently take place, in no event would a government or independent official visiting such facilities unannounced be refused entry.

26. Her Government would continue to discuss the possibility of raising the age of criminal responsibility to 14 years in a domestic context, in Parliament, before taking any further decisions on the matter. While solitary confinement had not been found to be unconstitutional in Namibia, its application at Namibian prison facilities had been found to be inconsistent with some provisions of the Constitution in a judgment issued the previous year. Prison authorities had been given 18 months to ensure that the practice was subject to additional safeguards that upheld human rights.

27. **Mr. Iscan** said that the Committee would be grateful to receive statistical data pertinent to the topics discussed.

28. **Mr. Contesse** said that he would welcome any examples of cases in which a refugee or asylum-seeker had threatened the national security, sovereignty or territorial integrity of Namibia or public order, decency or morality, as such examples would help the Committee to better understand the objectives of the Refugee Recognition and Control Act. He would be interested to learn more about the reasons behind the position of Namibian lawmakers that the age of criminal responsibility must be 12 and not 14. It would be useful to hear examples of specific cases in which the Namibian courts had convicted persons of the crime of torture so that the Committee could see how the Namibian courts interpreted that common law offence. Paragraphs 5, 14, 15 and 16 of the list of issues ([CAT/C/NAM/Q/3](#)) set out the type of statistical information that the Committee wished to receive.

29. **A representative of Namibia** said that a full report containing statistical information had been prepared and would be made available to the Committee as soon as it had been certified. While she was not aware of any incidents in which a refugee had threatened the national security of Namibia, it was necessary to have the relevant legislative framework in place in case such an incident did occur. The national courts were sufficiently independent to determine whether the provisions of section 24 of the Refugee Recognition and Control Act were constitutional.

30. One concern voiced in the discussion regarding the possibility of raising the age of criminal responsibility was the need to protect older children, who, if they did not face criminal responsibility for their actions, might be exploited by adults with criminal intentions.

31. While she was unable to say whether her Government would consider the possibility of unannounced visits to places of detention by the Office of the Ombudsman, the passing of the Ombudsman Bill of 2023 would in the future provide an opportunity for the Office to make such proposals itself as an entity with a newly enhanced level of independence. Not only State officials but also independent civil society actors currently enjoyed access to places of detention; for example, the African Union had sent rapporteurs to such facilities and the extensive reports that they had produced following those visits had served as a tool for improving prison conditions. Improvements had also been made in response to complaints filed with the courts by Namibian citizens.

32. She was unable to cite any specific examples of cases in which the courts had handed down convictions for torture, which might be the result of challenges faced by the courts in determining the threshold and elements of that offence. Her delegation had taken note of the Committee's comments as to the importance of passing the Prevention and Combating of Torture Bill.

The meeting rose at 5 p.m.