



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

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Summary record of the 2140th meeting*

Held at the Palais Wilson, Geneva, on Wednesday, 30 October 2024, at 10 a.m.

Chair: Mr. Heller

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* No summary record was issued for the 2139th meeting.

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The meeting was called to order at 10.05 a.m.

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

Third periodic report of Namibia (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 her country's third periodic report (CAT/C/NAM/3) was the outcome of a collaborative process led by the Ministry of Justice and involving various government ministries, departments and agencies and civil society organizations. Notwithstanding the devastating drought that was currently affecting the country's food security and economic development, the Government had taken measures to ensure the enjoyment of the human rights enshrined in the Namibian Constitution and fulfil its obligations under the Convention.
3. The Prevention and Combating of Torture Bill remained under consideration; a number of policy concerns had to be addressed before it could be resubmitted to the National Assembly. By virtue of article 144 of the Constitution, however, the Convention and other international instruments to which Namibia was a party were directly applicable and enforceable in the country, even without national legislation, and could therefore be cited by the courts. In one decision, the court had found that the practice of placing pretrial detainees in chains or other mechanical restraints, such as handcuffs, violated article 8 of the Constitution and article 10 (1) of the International Covenant on Civil and Political Rights.
4. Torture and cruel, inhuman or degrading treatment or punishment were prohibited by the Constitution. Members of the Namibian police force, the Namibian Defence Force and the Namibian Correctional Service accused of excessive use of force were investigated and, where warranted, prosecuted for their actions. For example, in one criminal matter, three police officers had been sentenced to 14 years' imprisonment for murder and for defeating the course of justice; in a number of civil matters, the Government had been ordered to pay damages owing to allegations of assault or excessive use of force by law enforcement officers.
5. Article 11 of the Constitution prohibited arbitrary arrest or detention. All police officers were trained on the requirement to inform accused persons, at the time of arrest, of their rights, the reasons for their arrest and the charges against them, which must be communicated in a language they understood. Police failure to abide by those constitutional safeguards had resulted in a number of civil claims against the Government; in most cases, damages had been awarded to the individuals affected.
6. To date, the Ministry of Justice had appointed around 70 in-house lawyers to provide legal aid to indigent persons in civil and criminal cases, including in bail applications. The means-testing threshold for legal aid had recently been raised from 3,500 to 7,000 Namibian dollars (N\$).
7. The Ombudsman Bill, which, among other things, would establish the Office of the Ombudsman as a separate agency with its own budget and accounting officer, had now been certified by the Attorney General. The Bill would be submitted to the National Assembly during the current financial year. In the meantime, the Office continued to train new police recruits and visit and inspect places of detention to monitor human rights compliance.
8. The effective implementation of laws and policies on gender-based violence and sexual violence remained a challenge, largely owing to social and behavioural factors. In response, the Government had developed the National Plan of Action on Gender-based Violence for the period 2019–2023 to tackle the root causes of gender-based violence and ensure a coordinated approach to related initiatives. Other measures taken included the establishment of specialized courts to deal with cases of gender-based violence in a victim-friendly environment; the introduction of a gender-based violence prevention programme in school curricula; and the conduct of awareness-raising campaigns for traditional and religious leaders to promote positive gender roles and eliminate harmful practices. In addition, amendments to the Combating of Domestic Violence Act of 2003 and

the Combating of Rape Act of 2000 had been adopted. As a result of the various efforts, a decrease in gender-based violence cases had been observed in 2023.

9. As part of its efforts to tackle violence against children, including online child sexual exploitation, the Government had adopted a national action plan and had put measures in place, under the Child Care and Protection Act of 2015, to protect children from harmful cultural and religious practices. Child marriage, for example, was strictly prohibited, and perpetrators faced penalties in the form of fines of up to N\$50,000 or imprisonment for up to 10 years, or both.

10. Training for law enforcement officers on the prevention of torture and excessive use of force included workshops on the Namibian police force's training manuals on human rights and the use of firearms. The curriculum of the Namibian Correctional Service Training College covered human rights instruments, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The conduct of correctional officers was governed by various directives, including on disciplinary procedures and the use of force, firearms and other weapons.

11. The principle whereby States had discretion to define conditions of entry to and presence in their territory had been reaffirmed in a 2017 decision of the Supreme Court. A refugee status determination process was in place for asylum-seekers. Those whose claims for asylum had been unsuccessful were specifically advised of the avenues of appeal available to them. The Government took the plight of stateless persons seriously. It had established a national committee and a national action plan on statelessness and had begun a review of the relevant legislative framework.

12. Efforts had been made to renovate all of the country's correctional facilities and improve living conditions. The prison population currently stood at 4,799 inmates and 138 pretrial inmates. Significant progress had been made in managing the spread of communicable diseases, such as tuberculosis, HIV/AIDS and hepatitis, in correctional facilities. While inmates had access to private medical care at their own cost, all correctional facilities had clinics staffed with qualified nurses and, in some cases, supervised by doctors.

13. The Internal Investigation Directorate investigated complaints of misconduct and human rights violations, including torture, against police officers, who could be brought before the courts if appropriate. Under the Correctional Service Act of 2012, disciplinary action could be taken against correctional officers alleged to have committed similar offences. Victims and survivors of torture could file civil claims for restitution and compensation, in accordance with the rules of the magistrates' and high courts.

14. The Government remained committed to the protection and promotion of human rights in Namibia and would continue to work diligently to comply with its obligations under the Convention. Alleged violations of the prohibition on torture would be dealt with through the existing effective legal framework and institutional arrangements.

15. **Mr. Iscan** (Country Rapporteur), noting that the State party had initially opted for the simplified reporting procedure but had ultimately submitted its report under the traditional procedure, said that he wished to begin by inviting the State party to support the conclusion of the treaty body strengthening process with the adoption of a conclusive biennial resolution of the General Assembly, in December 2024, with a corresponding budget.

16. He would welcome more detailed information on the measures taken by the State party to improve prison conditions, in accordance with the Nelson Mandela Rules, and on the frequency of, and measures taken to address, inter-prisoner violence. He would be grateful for more data on the total prison population, which, according to alternative sources, amounted to almost 9,000 persons deprived of their liberty, more than half of whom were pretrial detainees in police custody. The delegation might specify how many individuals were currently in pretrial detention, indicate the average length of pretrial detention and provide statistical data on the use of non-custodial measures. It would also be helpful to have information and statistical data on deaths in custody during the reporting period, any investigations carried out into those deaths and the number of police or prison staff who had faced criminal or disciplinary penalties as a result.

17. He wished to know whether the State party intended to amend the Correctional Service Act to explicitly prohibit corporal punishment in detention facilities, in accordance with a 1991 decision of the Supreme Court, and what steps it had taken to introduce a complete prohibition on corporal punishment of children in all settings and conduct awareness-raising campaigns on the issue.

18. The Committee would appreciate detailed, up-to-date information and data on all complaints of torture and ill-treatment received by the Office of the Ombudsman and the Internal Investigation Directorate, including the number of investigations conducted as a result, their outcomes and any disciplinary or other penalties imposed on perpetrators. He wondered what action the State party had taken to enhance the independence and increase the capacity of the Directorate to deal with complaints against police officers. He would be grateful for an update on any investigations into members of the Namibian police force regarding alleged acts of torture committed against suspected participants in the secession attempt in the Caprivi region in 1999 and any prosecutions resulting therefrom.

19. He would be interested to learn more about the current legislative framework governing the use of force by the authorities and the extent to which it was in compliance with the Convention, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. He would like the delegation to comment on the concerns raised by the Ombudsman, in his 2023 annual report, about allegations of the excessive use of force and unlawful detention by the police and about a lack of independent investigation of police conduct. It would be useful to know what measures were in place to ensure the prompt, effective and impartial investigation of all such allegations; whether any perpetrators had been prosecuted and, if so, how many had been convicted and what sentences had been imposed; and whether the victims had received adequate redress. The delegation might also comment on reports that police officers allegedly detained and sexually abused sex workers, who were reluctant to report such acts for fear of reprisals.

20. He looked forward to receiving the information requested by the Committee in its list of issues ([CAT/C/NAM/Q/3](#), para. 22) concerning any claims for compensation received by the State party in relation to allegations of torture and any reparation programmes it was implementing for victims of torture or ill-treatment. In accordance with article 14 of the Convention, victims of human rights violations must be provided with as full rehabilitation as possible, in the same way as victims of historical injustices, such as those that were the subject of ongoing negotiations between the State party and Germany on the recognition of the genocide committed in the former German South-West Africa colony between 1904 and 1908.

21. He would like to know what specific progress had been made, in law and in practice, to eradicate harmful traditional practices against women and girls, including the ritual of *olufuko*, which involved child marriage and sexual initiation rites, and what additional efforts had been made to prevent and criminalize the practice of forced sterilization. He would be interested to learn what steps had been taken to ensure the prompt and thorough investigation of all acts of violence committed against persons on account of their sexual orientation or gender identity. He would welcome up-to-date information on the status of the High Court decision in which the common law offences of “sodomy” and “unnatural sexual offences” had been declared unconstitutional, which the Government had reportedly appealed. The delegation might also clarify the situation regarding the Supreme Court decision recognizing the right of spouses of Namibian nationals to regularize their immigration status based on same-sex marriages conducted overseas and the subsequent adoption by Parliament of an act banning all same-sex marriages.

22. He would be glad to have an overview of the State party’s legislation, policy and practice in respect of places of deprivation of liberty, such as hospitals, schools, psychiatric institutions and social welfare homes, for the care of children, older persons and persons with disabilities. It would be interesting to know whether the use of physical and chemical restraints, cage beds and other such measures, was permitted and whether the Ombudsman had unrestricted access to those institutions. In the light of the 2017 report and recommendations of the Independent Expert on the enjoyment of all human rights by older

persons on her mission to Namibia ([A/HRC/36/48/Add.2](#)), the Committee would appreciate information on the progress made to protect the human rights of older persons.

23. Information on the current legislation, policy and practice governing the use of solitary confinement in places of deprivation of liberty would be welcome. He wondered whether incommunicado detention was still practised in Namibia and, if so, in what circumstances it was authorized and by whom. Might the State party consider abolishing its use entirely?

24. Lastly, he would appreciate specific information on the progress made by the State party in follow-up to the Committee's previous recommendations ([CAT/C/NAM/CO/2](#), paras. 47–49) concerning, among other aspects, the core human rights treaties to which Namibia was not yet a party.

25. **Mr. Contesse** (Country Rapporteur) said that the Committee remained very concerned that the Prevention and Combating of Torture Bill had still not been adopted. He would like the delegation to explain the specific policy concerns that still needed to be addressed. He wished to know whether the Bill had been amended, as the Committee had recommended in its previous concluding observations ([CAT/C/NAM/CO/2](#), para. 9), to bring it further into line with the Convention. He wondered whether any other steps had been taken to establish acts of torture as specific criminal offences and whether acts amounting to torture or ill-treatment were subject to a statute of limitations. The delegation might also clarify whether the Bill addressed the discretion afforded the courts in sentencing persons convicted of acts of torture or cruel, inhuman or degrading treatment or punishment, who could receive a term of imprisonment or a fine. Given that the Convention was directly applicable in the State party, it would be useful to have examples of court cases in which its provisions had been invoked.

26. He would like to know what measures the State party had taken to enshrine in its legislation all fundamental safeguards, such as the right of individuals to have access to a lawyer and the right to request and receive a medical examination by an independent physician of one's own choice. The delegation might also provide information and data on cases in which the authorities had failed to comply with those safeguards, such as the number of complaints made and investigations carried out and the nature and duration of any penalties imposed on those found responsible. It would be helpful to have details of the complaint mechanisms that were in place for reporting such violations and data on the number and outcomes of any habeas corpus petitions that had been submitted during the reporting period.

27. He noted that, in a 2021 High Court decision in the case of *Booyesen v. State*, it was stated that limitations could be imposed on the right to legal representation in exceptional circumstances. He would like to know what those circumstances were and whether continuances could be granted until defence counsel could be secured.

28. Information from the Ombudsman had indicated overcrowding and unsanitary conditions and a lack of basic cleaning and hygiene supplies in a number of places of detention, some of which had now been closed. He wondered where inmates were held while places of detention were cleaned and renovated and whether there was a set time frame for completing those tasks in all the facilities concerned. He would like to know what measures had been taken to reduce the use and length of pretrial detention and to address the various shortcomings in the criminal justice system that were reportedly contributing to the large backlog of pending cases involving pretrial detainees.

29. He would appreciate information on the status and content of the Child Justice Bill, in particular whether it set the minimum age of criminal responsibility at 14 years of age, as had been reported. Details of the measures taken to ensure that children were not held in detention centres for adults and the steps taken to establish an appropriate juvenile criminal justice system would also be welcome.

30. He would be grateful to hear more about the content of the Ombudsman Bill, including whether it provided for the Ombudsman to make unannounced visits to places of detention and established a fixed tenure for the office holder. It would also be useful to know what financial and human resources had been allocated to the Office of the Ombudsman during the reporting period.

31. Given that a number of treaty bodies had raised the issue of gender-based violence in the State party, he wished to hear more about policies and plans to address the ongoing challenges in that area. It would be helpful to receive data on complaints of gender-based, domestic or sexual violence received by the authorities during the reporting period, disaggregated by the victims' age and ethnicity or nationality, and on investigations and prosecutions undertaken in cases of such violence, both on the basis of complaints and *proprio motu*, and any convictions and penalties resulting therefrom. The delegation might describe the protection and support services available to victims of domestic violence, including the number of shelters for victims and their capacity and occupancy rates, and the outcomes of the National Plan of Action on Gender-based Violence (2019–2023), including the establishment of any mechanisms to monitor the effectiveness of initiatives in that domain.

32. With regard to non-refoulement, he wished to know what steps the State party intended to take in response to the Committee's recommendation concerning the repeal of section 24 (1) of the Refugee Recognition and Control Act of 1999, under which the relevant minister could request the expulsion of refugees or protected persons, and of the provisions of the Immigration Control Act of 1993 that prevented persons convicted of sodomy from entering Namibia (CAT/C/NAM/CO/2, paras. 27 (a) and (e)). He would be grateful for further details of the conditions for entry to and presence in the country mentioned by the head of delegation in her opening remarks. Data on the number of asylum applications received during the period under review, the number of successful applications and the number of asylum-seekers whose applications had been accepted because they had been tortured or might be tortured if returned to their country of origin would also be appreciated. In addition, he would welcome information on any mechanisms in place to identify individuals in need of international protection and the procedure followed when a person invoked that right. He wondered whether individuals facing expulsion, return or extradition were informed of their right to seek asylum and to appeal a deportation decision. Did appeals have suspensive effect?

33. It would be useful to know how many stateless persons lived in the State party, what measures had been taken during the reporting period to mitigate the risk of torture or ill-treatment faced by stateless persons and why the State party had not ratified the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, the Convention relating to the Status of Stateless Persons or the Convention on the Reduction of Statelessness.

34. He was curious to hear about any cases in which the State party had initiated prosecution for the crime of torture pursuant to section 2 (1) of the Geneva Conventions Act of 2003, which provided for universal jurisdiction in the event of grave breaches of the Geneva Conventions.

35. He wished to know how many law enforcement officials, prison staff, military officers, investigators, judicial personnel and border guards had taken part in training programmes that addressed the provisions of the Convention against Torture, how officers were trained in investigating and handling cases of other forms of prohibited ill-treatment, how the Office of the Ombudsman was involved in providing training on the investigation of torture claims and what training was provided to prevent the retraumatization of victims of torture or ill-treatment. Lastly, information would be welcome on steps taken to improve methods of investigation, including training programmes on non-coercive interrogation techniques, and on any training developed for judges, prosecutors, forensic doctors and medical personnel working with prisoners on the detection and documentation of the physical and psychological sequelae of torture, including based on the revised Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

The meeting was suspended at 11.30 a.m. and resumed at 11.55 a.m.

36. **A representative of Namibia**, recalling that, in the early years of its independence, Namibia had ratified or acceded to all international instruments likely to assist it in setting up its systems and governance architecture, said that compliance with the country's obligations under those instruments was achieved either through the establishment of

institutional arrangements or the enactment of specific laws. The slower pace of ratifications or accessions in more recent years was not due to a lack of political will but, rather, to the belief that the existing framework was sufficient to respond to the issues facing the population. The country's attachment to the work of the treaty bodies was evident in its interaction with them and, for instance, in the fact that it had sent a minister to attend the interactive dialogue despite being in the midst of elections.

37. The figures at the Government's disposal indicated that there was no overcrowding in prisons; the figures received by the Committee might not take account of recent developments such as the issuance of presidential pardons and the release of inmates on parole. Pretrial detention could last for between 6 and 12 months. Longer periods were often the result of cases being postponed, notably owing to delays in securing legal representation, insufficient capacity in the justice system and the need to conduct scientific tests. There was no deliberate attempt on the part of the authorities to maintain individuals in pretrial detention. The amount of bail was determined on the basis of the type of offence committed; however, there were various options for defendants to seek bail reductions.

38. There was no organized or gang-related inter-prisoner violence. When isolated incidents of inter-prisoner violence occurred, the typical course of action was to separate the prisoners concerned from each other. The Ministry of Justice and the Ministry of Safety and Security were in consultations regarding the establishment of facilities to house persons convicted of lesser offences to ensure that community service orders were complied with and implemented in a safe manner.

39. The Office of the Ombudsman was provided for in the Constitution. Although there was no evidence of any interference in the Office's work, steps were being taken to separate the Office from the Ministry of Justice. The requisite bill was ready for submission to the National Assembly but would probably be placed on the 2025–2026 legislative agenda. The matter of the tenure of the Ombudsman was under discussion; however, the focus was on finalizing the issue of the Office's independence. The individuals who had held the position of Ombudsman had proved their integrity and had not been influenced by any State institution. The position of Ombudsman was quite high-ranking so, while the incumbent enjoyed unfettered access to prison facilities, it was not always practical for him or her to conduct unannounced visits owing to the security arrangements that had to be made in advance. The current Ombudsman had been in post less than two years but had been rather vocal about his displeasure at the conditions in prisons and would not have hesitated to report any restriction imposed on his access to facilities. The Ombudsman's annual reports to the National Assembly were important sources of information and could trigger legislative and judicial procedures.

40. There was no evidence of sex workers having been raped or sexually abused by police officers. If such cases did occur, they could be reported to the Office of the Ombudsman or to civil society organizations such as the Legal Assistance Centre without fear of reprisals. The Combating of Immoral Practices Act of 1980 was an outdated piece of legislation from the apartheid era and had not been used to criminalize sex work in recent years. Work was ongoing to reform legislation that was no longer consistent with the spirit and values of the Constitution.

41. A high-level committee on the issue of genocide reparations had been set up, composed of ministers and chaired by the Vice-President. The National Assembly had engaged in frank discussion of the Joint Declaration by the Federal Republic of Germany and the Republic of Namibia and had rejected the amount of compensation offered therein. Talks were continuing between the two States with a view to resolving the question of reparations.

42. Child marriage was prohibited under the Child Care and Protection Act, and the ban would be reiterated in the proposed legislation on marriage. The ritual of *olufuko* had become more symbolic in nature and had not been regarded as a platform for sexual initiation or child marriage for at least 15 years.

43. Following a Supreme Court ruling on forced sterilization, the Ministry of Health had issued directives designed to raise awareness among healthcare professionals and ensure that no such procedures were performed. Public consultations on abortion and forced sterilization

had recently been concluded, and the debate on those topics would continue in the next parliamentary term.

44. Homosexuality was not criminalized in Namibia. It was not possible to comment on the appeal against the High Court ruling declaring that the offence of sodomy was unconstitutional, since the matter remained pending. While the authorities were concerned about the number of killings of members of the lesbian, gay, bisexual, transgender and intersex community, it was unclear whether those killings had been committed on account of the victims' sexual orientation.

45. While there were institutions for the care of older persons in Namibia, most such persons were cared for by their relatives. There had been some isolated cases of elder abuse by family members, but most people in Namibia would be appalled at such occurrences.

46. Incommunicado detention and solitary confinement were not practised in Namibia, and the use of the latter had been declared unconstitutional.

47. The courts had previously taken note of the constitutional prohibition on torture, and it was unclear whether there was a need for separate legislation criminalizing torture. The Prevention and Combating of Torture Bill, if enacted, would go above and beyond what was required. The Bill was consistent with the Convention; details of the specific concerns raised by the legislature would be provided to the Committee in writing. The statute of limitations on torture was dealt with in a number of existing pieces of legislation.

48. The Child Justice Bill had been prepared following extensive consultations, including with the United Nations Children's Fund (UNICEF), and would go before the National Assembly in 2025. The minimum age of criminal responsibility would remain at 12 years. Children in conflict with the law were held in separate facilities from adults and were offered robust psychosocial support.

49. The authorities were concerned about gender-based violence, sexual violence and femicide and had stepped up their efforts to collaborate with civil society to increase awareness of those issues. The legislation on rape and domestic violence had been strengthened in 2022, and a high-level ministerial committee chaired by the Prime Minister was developing a new gender policy for the period 2024–2030 that had a strong focus on gender-based violence and sexual violence. There were plans to increase the number of women and child protection units nationally. The units were managed by the police using an integrated approach involving, inter alia, civil society and social workers.

50. **Mr. Iscan** said that, in order to make a thorough analysis and formulate its recommendations, the Committee required information on how policies and legislation were reflected in practice. Statistical data were important in that regard, although it was preferable to provide such data in writing.

51. He would welcome updated information on cases of enforced disappearance that had reportedly occurred in the context of the country's liberation struggle, including the disappearances of former members of the South West Africa People's Organization, with a particular focus on whether the alleged victims and their families had obtained redress.

52. He wished to know whether electrical discharge weapons, sometimes known as Tasers, were used in the State party and, if so, whether they were used only by trained law enforcement personnel, exclusively in extreme and limited situations as a substitute for lethal weapons and in strict compliance with the principles of necessity and proportionality.

53. He would welcome details of the State party's policies, legislation and practices in the area of counter-terrorism, with a particular emphasis on whether human rights and the rule of law were respected in that sphere. It would be useful to hear about the practical impact of the Prevention and Combating of Terrorist and Proliferation Activities Act of 2014 and how it complied with the international normative framework on human rights.

54. He would appreciate an account of any relevant legislative and executive measures taken in the context of states of emergency, including with respect to their compliance with the absolute prohibition on torture under article 2 of the Convention and article 4 of the International Covenant on Civil and Political Rights.

55. **Mr. Contesse** said that the Committee was concerned that, seven years on, effective follow-up had not yet been given to its recommendation that the State party should expedite the adoption of the Prevention and Combating of Torture Bill ([CAT/C/NAM/CO/2](#), para. 9). It would be interested to hear what concerns had prevented legislators from passing the Bill. The existence of a general constitutional provision prohibiting torture notwithstanding, the principle of legality required the offence of torture to be explicitly set out and defined in law.

56. He would appreciate an account of the reasoning behind the State party's decision to maintain the minimum age of criminal responsibility at 12 years. The Committee on the Rights of the Child, in paragraph 22 of its general comment No. 24 (2019), encouraged States parties to the Convention on the Rights of the Child to increase the minimum age to at least 14 years.

The meeting rose at 1 p.m.