
Committee against Torture

List of issues prior to submission of the third periodic report of Namibia*

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/NAM/CO/2, para. 46),¹ the Committee requested the State party to provide information on the follow-up to its recommendations on the adoption of the bill on prevention and combating torture, conditions of detention and respect for the principle of non-refoulement (see paras. 9, 17(b) and (c) and 27(c), respectively). Noting the reminder from the Committee's Rapporteur for follow-up to Concluding observations dated 20 August 2018, and noting that no reply was provided, the Committee considers that the State party has not cooperated with the Committee's follow-up procedure. These points are covered in paragraphs 2, 3, 9 and 21 of the present document.

Specific information on the implementation of articles 1-16 of the Convention

Articles 1 and 4

2. Please indicate whether the State party has adopted a law prohibiting torture as an autonomous crime, as previously recommended by the Committee (para. 9), and if it has not, please provide updated information on the status of the draft bill on prevention of torture submitted to the Minister of Justice by the Law Reform and Development Commission. Please indicate whether the existing or draft legislation prohibiting torture in the State party explicitly criminalizes attempts to commit torture and acts constituting complicity or participation in torture. Please also provide information about the penalties for torture in the draft law and whether acts amounting to torture may be subjected to a statute of limitations. Please indicate whether acts of cruel, inhumane or degrading treatment have been included in the same law, as previously recommended by the Committee.²

3. Please describe any measures taken during the reporting period to investigate allegations that members of the Namibian police force committed torture and ill treatment against suspected participants in the secession attempt in the Caprivi region in 1999, including as recounted by a witness for the prosecution in the retrial of eight of the alleged

* Adopted by the Committee at its sixty-eighth session (11 November-6 December 2019).

¹ Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

² CAT/C/NAM/Q/2 (2017), para. 9.



secessionists in March 2019, notwithstanding the declaration of a state of emergency during that time, as previously recommended by the Committee (paras. 21 and 23).

4. Noting the State party's assertion in its second periodic report to the Committee that the Convention is directly enforceable "by the judiciary and quasi-judicial bodies", please provide examples of instances when the Convention has been directly invoked before domestic courts, and the outcome.

Article 2³

5. With respect to fundamental legal safeguards against torture and ill-treatment, please provide information on measures taken by the State party to ensure that all detainees enjoy fundamental legal safeguards from the outset of their deprivation of liberty, in particular:

- (a) That persons deprived of their liberty have the right to have access to a lawyer;
- (b) That persons deprived of their liberty have the right to request and receive an examination by an independent physician, preferably of their choice;
- (c) That persons deprived of their liberty have the right to be informed of their rights and of the charges against them;
- (d) That persons deprived of their liberty have the right to notify a relative or any other person of their choice of their deprivation of liberty;
- (e) That persons deprived of their liberty have the right to be brought promptly before a judge, regardless of the reasons for their arrest;
- (f) That authorities are required to maintain and promptly update detention registers at places of detention and in a central register;
- (g) That legal aid is available to indigent persons from the outset of deprivation of liberty.

6. Please provide information on the State party's efforts to monitor the provision of fundamental safeguards against torture to persons deprived of their liberty, including the complaints mechanisms available to report violations, and information on any cases in which authorities were alleged to have failed to comply with the safeguards enumerated in question 5, including data regarding the number of such complaints registered, the number of investigations carried out, and the outcome of these investigations, including any cases in which disciplinary or other measures were taken against officials found responsible for violations, and the nature and duration of such sanctions.

7. Please provide data on the number of *habeas corpus* petitions registered by the courts during the reporting period, and the number of cases in which such petitions were granted, resulting in the release from detention of the petitioner, during the reporting period.

8. Please provide information about measures taken to address reports of unacceptably lengthy pre-trial detention, as previously noted by the Committee, and indicate whether the State party has recruited additional magistrates; or increased the use of non-custodial penalties and alternatives to detention, as previously recommended by the Committee. Please also provide updated data on the number of persons currently in pre-trial detention and the average length of time in which accused persons are held in pre-trial detention. Also indicate measures taken to address delays in the justice system, and backlog of criminal cases in courts.

³ The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2, the obligation to prevent torture in article 2 is wide-ranging. The obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

9. With reference to the Committee's previous recommendation (para. 13), and the recommendations of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions, please indicate if the Ombudsman Act has been amended during the reporting period to provide the Ombudsman with a fixed term, the ability to recruit its own staff, and a specified source of funding. Please also indicate if the resources provided to the Ombudsman's office have increased during the reporting period.

10. Please provide statistical data, disaggregated by the victims' age and ethnic origin or nationality, on the number of complaints of gender-based, domestic and sexual violence received by the authorities during the reporting period, the number of investigations and prosecutions undertaken on the basis of such complaints, and any convictions secured and the sanctions handed down in such cases.

11. In light of reports that domestic violence remains widespread in the State party, please provide information on measures taken during the reporting period to increase protection and support services available to victims of such violence. Please indicate whether the State party has established mechanisms for protection orders in villages where no court or sitting magistrate is available.

12. With reference to the Committee's previous recommendation (para. 29), please describe the progress made in investigating allegations of rape of San women, and ensuring that perpetrators are prosecuted and punished. Please also provide data on the number of allegations of rape and other acts of gender-based violence reported to customary courts during the reporting period, and provide information on the outcome of any such cases. Please indicate the measures taken by the State party to ensure that all such cases are brought before judicial courts that can impose criminal liability.

13. Please provide data on complaints received concerning sexual abuse and exploitation of refugees at the Osire refugee settlement by public officials or non-governmental workers and indicate whether any of these have resulted in investigation and prosecution and if any victims of such violence have obtained redress. Please provide information about the progress and outcome of any investigation undertaken into sexual assault allegations made against the former Police commandant of the Osire settlement.

14. Please provide information on measures taken during the reporting period to prevent and punish sexual violence against children, and in particular, please indicate whether the Child Protection Act 3 (2015) has entered into force.

15. With reference to the Committee's previous recommendation (para. 33), please provide up-to-date statistics on complaints, investigations, prosecutions, convictions and sentences imposed on perpetrators of criminal acts relating to harmful traditional practices, including child marriage and sexual assault in connection with the ritual of Olufuko. Please describe the measures that the State party has taken to strengthen its efforts to combat harmful traditional practices, including through education and legal prohibitions.

16. Please indicate whether the State party has put an end to the forced sterilization of people with HIV following the decision of the Supreme Court in the case of *Government of Namibia v. LM and others*, which declared it unconstitutional. Please indicate if there have been any prosecutions or other sanctions handed down in cases of forced sterilization and if the State party has explicitly criminalized this practice in law.

17. Please provide data on the number of complaints, investigations, prosecutions, convictions and sentences in relation to cases of human trafficking recorded during the reporting period. Please also indicate if the State party has adopted anti-trafficking legislation or taken other measures to prevent, combat and criminalize human trafficking.

Article 3

18. Please provide information, disaggregated by country of origin, on the number of persons who have been returned, extradited or expelled during the period under review. Please provide a list of countries to which individuals were returned. Please specifically indicate whether the State party has returned asylum seekers to the Democratic Republic of Congo during the reporting period.

19. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please provide updated information on existing appeal mechanisms. Please describe mechanisms in place to identify individuals in need of international protection, and describe the procedure followed when a person invokes this right and whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision. If so, please indicate whether such an appeal has suspensive effect.

20. With reference to the Committee's previous recommendation (para. 27 (d)), please provide specific information on the measures taken to ensure that persons at risk of persecution due to their sexual orientation or gender identity are not subject to refoulement, and have equal access to refugee protection, without discrimination. Please indicate the number of asylum applications received from individuals claiming persecution on such grounds, the number of successful applications and the number of such asylum seekers who have been returned, extradited or expelled. Indicate what measures have been taken to amend the Immigration Control Act No. 7 (1993), which bars individuals convicted of sodomy from entering Namibia.

21. Please provide information on measures taken by the State party during the reporting period to mitigate the risk of torture or ill-treatment of faced by stateless persons, and indicate whether the State party has ratified the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa and accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as previously recommended by the Committee (para. 27(b)).

Articles 5–9

22. Please provide information on any case in which the State party has initiated a prosecution for the crime of torture pursuant to the Geneva Act, Act No. 15 of 2003, section 2(1) which permits the prosecution of any person who in Namibia or elsewhere, and irrespective of nationality, commits, aids, abets or procures the commission of a grave breach of the Geneva Conventions of 1949.

Article 10

23. Please provide up-to-date information on educational programmes developed by the State party to train law enforcement officials, prison staff and border guards on the provisions of the Convention against Torture. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing cases of torture and ill-treatment and, if so, please provide information on the methodology.

24. Please describe the steps taken to improve methods of investigation, including training programmes on non-coercive interrogation techniques. Indicate whether the provisions of the Convention, and in particular the absolute prohibition of torture, are part of such training and instruction provided to public officials such as police and law-enforcement officers, investigators, judicial personnel, military officers and prison staff; and whether there is a vetting system in relation to past abuses.

25. Describe any training programme elaborated for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting physical and psychological sequelae of torture, including specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Article 11

26. Please provide statistical data regarding deaths in custody during the period under consideration, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased, and cause of death. Please provide information on investigations carried out into these deaths in custody, including the authority that carried out the investigation. Please

also indicate whether any police or prison staff have been subjected to criminal or disciplinary punishment in cases involving death in custody during the reporting period.

27. With reference to the Committee's previous recommendation, (paras. 18-19), please provide information on progress made in investigating the circumstances of the death in police custody of William Cloete on 1 April 2007.

28. With reference to the Committee's previous recommendations (para. 17), please describe the measures taken during the reporting period to improve prison conditions, and ensure that they are in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Indicate, in particular, the steps taken to systematically separate pre-trial detainees from detainees serving a sentence and juveniles from adults, to prevent the spread of tuberculosis and HIV in correctional facilities, and to ensure adequate food and access to medical services for all persons deprived of their liberty. Please provide information about the capacity and actual occupancy rates of all places of deprivation of liberty in the State party.

29. Please indicate whether the State party intends to amend the Correctional Service Act No. 9 of 2012, so as to explicitly prohibit corporal punishment in detention facilities following the Supreme Court decision of *Ex parte Attorney-General, Namibia: in re corporal punishment by organs of the State*.⁴

30. Please provide updated data on visits to places of detention undertaken by the Ombudsman during the reporting period and information about the findings and recommendations of those visits and actions taken by the State party to respond to them. Please indicate if the Ombudsman carried out unannounced visits to places of detention.

31. Please provide detailed information on visits to places of detention undertaken by visiting judges, as contemplated by sections 122 and 123 of the Correctional Service Act,⁵ including the findings of such visits and actions taken by the State party in response to their recommendations. Please also provide information about unannounced visits to places of detention by independent national and international actors and organisations during the reporting period, and whether reports on such visits are made public.

32. Please indicate whether the State party is considering ratifying the Optional Protocol to the Convention against Torture and establishing a National Preventive Mechanism.

Articles 12–13

33. Please provide information about all complaints of acts meeting the definition of torture and ill-treatment in the Convention, including those classified as 'assault,' 'homicide' or other offenses under domestic law, received by the State party's authorities during the reporting period. Please specify the number of such complaints received by the Ombudsman and the number of complaints received by the Internal Investigation Directorate. Please indicate how many of these complaints were investigated, the authority that carried out the investigation, the number that resulted in criminal prosecution, and the charges filed and sentences applied in cases of conviction; and the number that resulted in disciplinary sanctions and the type and duration of sanction applied.

34. Please indicate if, as recommended by the Committee (para. 19), the State party has taken steps to ensure that all deaths in custody and all allegations of conduct amounting to torture or ill-treatment are investigated by independent bodies with no institutional or hierarchical connection between investigations and alleged perpetrators.

35. Please provide information about the implementation of the Witness Protection Act following its enactment in 2017.

36. Please indicate any progress made by the State party's authorities during the reporting period in investigating reports of enforced disappearances in the context of the liberation struggle, including the disappearance of former members of the South West Africa People's

⁴ 1991 (3) SA 76.

⁵ Correctional Service Act Namibia.

Organization (SWAPO) and whether the victims and families of victims have obtained redress.

Article 14

37. Please provide information on redress and compensation measures, including means of rehabilitation ordered by the courts and provided to the victims of torture or their families during the reporting period. Provide figures on the number of requests for compensation, the number of requests granted, and the compensation amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

Article 15

38. Please provide examples of any cases in which courts have found evidence to be inadmissible on the grounds that it was obtained through torture or cruel, inhuman and degrading treatment, enshrined in section 12, para. 1(f) of the Constitution. Please indicate whether the State party's authorities investigated claims that evidence admitted during the criminal trials of the alleged Caprivi secessionists was obtained through torture, as previously recommended by the Committee (para 21), the outcome of those investigations, and whether any evidence was declared admissible on these grounds.

Article 16

39. Please explain how acts of cruel, inhuman or degrading treatment or punishment are currently defined and prohibited in domestic law, given the absence of a statutory offence recognizing the crimes of torture or cruel, inhuman or degrading treatment or punishment.

40. Please describe measures taken by the State party's authorities to investigate reports of police brutality during the reporting period, including allegations that police officers assaulted and seriously injured several individuals in Grashoek in 2017 while searching for escaped detainees, including whether a criminal investigation was opened into the allegations.

41. Describe the steps taken for the implementation of the Child Care and Protection Act of 2015, section 228(3) of which prohibits corporal punishment in schools. Please provide information about measures taken to explicitly prohibit, by law, corporal punishment of children in other settings. Also provide information on the implementation of article 228(3) of the Child Care and Protection Act 2015, which prohibits violence against children in prisons and in police cells.

42. Indicate whether the Child Justice Bill has been adopted and whether the State party has taken steps to establish an appropriate criminal juvenile justice system.

43. Please provide information on the measures taken to ensure that all crimes and acts of violence that target persons on the basis of their sexual orientation or gender expression or identity are properly and promptly investigated and prosecuted.

Other issues

44. Please describe the extent to which the implementation of the Prevention and Combating of Terrorist Activities Act as amended (Act No. 12 of 2012) has complied with the State party's obligations under the Convention. Please provide information on the number of persons convicted under such legislation; the legal safeguards and remedies available to persons suspected of terrorism or other security-related offences; whether there have been any complaints of non-observance of international standards; and the outcome of those complaints.

45. Please provide information on any consideration given by the State party to making declaration envisaged under article 22 of the Convention to recognize the competence of the Committee to receive and consider individual communications.

General information on the other measures and developments relating to the implementation of the Convention in the State party

46. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes. Please indicate the resources allocated and statistical data.
