
ADVANCE UNEDITED VERSION

Committee against Torture

List of issues in relation to the third periodic report of Namibia*

Issues identified for follow-up in the previous concluding observations¹

1. In its previous concluding observations,² 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 combatting of torture, on conditions of detention, and on respect for the principle of non-refoulement.³ Noting the reminder from the Committee's Rapporteur for follow-up to concluding observations, dated 20 August 2018, to which there was no reply, the Committee considers that the State party has not cooperated with its follow up procedure. These points are covered in paragraphs 2, 7 and 13-16 of the present document.

Articles 1 and 4

2. With reference to paragraphs 5, 48, 53 and 56 of the State party's periodic report,⁴ please provide updated information on the current status of the Prevention and Combatting of Torture bill, submitted to the Minister of Justice by the Law Reform and Development Commission. Please also provide any information with regard to amendments to the bill which seek to bring it further in line with the State party's obligations under the Convention, as previously recommended by the Committee, including provisions which criminalize the acquiescence and complicity of State officials, or officials acting in an official capacity, to acts of torture, including acts of torture committed by individuals outside of their command and the establishment of minimum mandatory sentences for acts of torture. If the aforementioned bill has not been adopted, please provide information on any other initiatives undertaken by the State party to explicitly criminalize acts of torture. Please provide information as to whether acts amounting to torture may be subject to a statute of limitations, both under current and prospective legislation. 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,⁵ please provide examples of cases in which it has been directly invoked before domestic courts and describe the outcomes of these cases.

* Adopted by the Committee at its seventy-ninth session (15 April – 10 May 2024).

¹ The present list of issues is to be adopted in relation to the periodic report submitted by the State party under the traditional reporting procedure (CAT/C/NAM/3) and not in response to the list of issues prior to reporting adopted by the Committee at its sixty-eighth session (CAT/C/NAM/QPR/3).

² CAT/C/NAM/CO/2, para. 46.

³ *Ibid.* paras. 9, 17 (b) and (c), and 27(c), respectively.

⁴ CAT/C/NAM/3.

⁵ CAT/C/NAM/2, para. 8.

Article 2⁶

3. With reference to paragraph 6 of the State party's periodic report, and the previous recommendations of the Committee,⁷ please describe any initiatives undertaken by the State party to enshrine fundamental legal safeguards in its legislation, in particular: (a) the right to have access to a lawyer, including the right to access free and effective legal aid in cases of indigence; (b) the right to request and receive an examination by an independent physician, preferably of ones own choice; (c) the right for individuals, at the time of arrest, to be informed of their rights, along with the reasons for their arrest and any charges against them; (d) the right to be brought promptly before a judge, regardless of the reasons for arrest; (e) the right to notify a relative or other person of choice of ones deprivation of liberty; and, (f) the obligation of authorities to maintain and promptly update detention registers at places of detention and in a central register. Should any of the aforementioned rights already be established in legislation, please provide information regarding their source. Please provide information regarding any cases in which authorities have failed to comply with these safeguards, including the number of such complaints registered, the number of investigations carried out and their outcomes, and any cases in which disciplinary or other measures were taken against officials found responsible for violations, and the nature and duration of sanctions handed down. Please provide detailed information regarding complaint mechanisms available to report violations, and how they function in practice. Please also provide 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.

4. Please provide any relevant updates regarding the progression of the Ombudsman Bill, as referenced in paragraph 7 of the State party's periodic report, including whether the Bill has been tabled before the National Assembly and adopted. Please also provide further information regarding the content of the Bill, including information as to whether it includes provisions specifying a fixed term for the Ombudsman, endowing the Ombudsman's Office with the power to recruit its own staff, and to have a specified source of funding. Please also indicate the human and financial resources allocated to the Office during the reporting period.

5. With reference to paragraph 22 of the State party's periodic report, please provide information on the number of complaints of gender-based, domestic or sexual violence received by authorities during the reporting period, along with statistical data, disaggregated by age and ethnic origin or nationality, regarding the victims. Please further provide information on the number of investigations and prosecutions undertaken regarding gender-based, domestic or sexual violence, both on the basis of such complaints and proprio motu, and any convictions secured and the sanctions handed down in such cases. Please provide information regarding the availability of protection and support services available to victims of domestic violence. Please also provide information regarding the provision and availability of shelters for victims of domestic violence, including information on the number of such shelters, the number of places available, and occupancy rates during the reporting period. With reference to paragraphs 24 and 25 of the State party's periodic report, please provide information on the outcomes of the National Development Plan 5, as they relate to gender-based violence, and of the GBV Plan of Action 2019-2023, including information regarding any mechanisms in place to monitor the effectiveness of these initiatives. Please also provide information on the present status of the Combating of Rape Amendment Bill, the Combating of Domestic Violence Amendment Bill, the Sexual Exploitation Bill and the

⁶ 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 (1) by States parties, the obligation to prevent torture in article 2 is wideranging. The obligations 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 general comment No. 2 (2007).

⁷ CAT/C/NAM/CO/2, para. 11.

Harassment Bill. Lastly, please indicate what measures have been taken during the reporting period to prevent and punish sexual violence against children.

6. With reference to the Committee's previous recommendation,⁸ 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.

Article 3

7. Taking into account the information provided in paragraph 16 of the State party's periodic report, please provide information on any steps taken to amend section 24(1) of the Refugee Recognition and Control Act, 1999, in order to respect the State party's obligations under article 3 of the Convention, which establishes an absolute prohibition of refoulement when there is a risk of torture. 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 appeals mechanisms. Please describe the 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.

8. With reference to paragraph 20 of the State party's periodic report, which states that Namibian immigration laws do not discriminate on the basis of sexual orientation, please explain how this information is consonant with section 39(2)(f) of the Immigration Control Act, No. 7 of 1993, which bars individuals convicted of sodomy from entering Namibia. Please provide information on any steps taken to amend this provision, in line with the Committee's previous recommendation,⁹ to ensure that individuals at risk of persecution owing to their sexual orientation or gender identity are not subject to refoulement and have equal access to asylum without discrimination. Please also indicate the number of asylum applications received from individuals claiming persecution on the basis of their sexual orientation or gender identity, the number of successful applications on these grounds, and the number of applications which have been rejected, including the countries to which they were returned, extradited or expelled.

9. Please provide information on the measures taken by the State party during the reporting period to mitigate the risk of torture or ill-treatment faced by stateless persons, and explain reasons for the State party's non-ratification of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and non-accession 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.¹⁰ With reference to paragraphs 18 and 19 of the State party's periodic report, please provide information on the outcomes of the regional consultations on the 1969 OAU Convention Governing Specific Aspects of Refugees Problems in Africa, the 1954 Convention Relating to the Status of Stateless Persons and 1961 Conventions on the Reduction of Statelessness, including updated information on the work of the National Working Committee on Statelessness and the status of the draft National Action Plan on Statelessness. If the draft National Action Plan on Statelessness has been implemented, or is under implementation, please provide information regarding the results achieved to date.

⁸ *Ibid*, para. 33.

⁹ *Ibid*, para. 27(d).

¹⁰ *Ibid*, para. 27(b).

Articles 5–9

10. Please provide information on any case in which the State party has initiated a prosecution for the crime of torture pursuant to the Geneva Conventions 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

11. With reference to paragraphs 59-65 of the State party's periodic report, please provide data on the number of law enforcement officials, prison staff, military officers, investigators, judicial personnel and border guards who have attended educational programmes which include instruction on the provisions of the Convention against Torture. Noting the development in 2015 of the manual entitled "Prevention of Torture Training Manual for Police Officers", please provide updates on the distribution and use of the manual, as well as on courses including instruction on the information contained therein. Please also indicate as to whether similar manuals have been developed for the other aforementioned groups. Please further indicate whether the State party has developed a methodology to assess the effectiveness of training, informational materials and educational programmes in reducing cases of torture and ill-treatment and, if so, please provide information on the methodology.

12. Please describe the steps taken to improve methods of investigation, including training programmes on non-coercive interrogation techniques. Please also describe any training programme developed for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the 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 (Istanbul Protocol), as revised.

Article 11

13. With reference to the Committee's previous recommendations¹¹ and paragraphs 8 and 9 of the State party's periodic report, please describe specific 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). Please provide information about the capacity and actual occupancy rates of all places of deprivation of liberty in the State party. Noting the information provided regarding the development of the Namibian Correctional Service's Health Policy, please provide information regarding the outcomes of the implementation of this policy, especially as they relate to communicable diseases such as tuberculosis, HIV and hepatitis. Please also provide information as to whether the Health Policy includes relevant support for mental health. 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's decision in *Ex parte Attorney-General, in re corporal punishment by organs of State*.¹²

14. Please provide statistics regarding the number of individuals currently in pretrial detention, along with information regarding the average length of pretrial detention in the State party during the reporting period. Please also describe any steps taken by the State party to reduce the use and length of pretrial detention. Please provide information, in particular, as to whether the State party has taken steps to recruit additional magistrates and reduce judicial backlogs, along with any relevant information regarding alternatives to detention,

¹¹ *Ibid*, para. 17.

¹² 1991 (3) SA 76.

including statistics on the use of non-custodial measures, as previously recommended by the Committee.¹³

15. Please provide statistical data regarding deaths in custody during the period under consideration, disaggregated by place of detention, sex, age and ethnicity or nationality of the deceased, and cause of death. Please provide information on the investigations carried out into these deaths in custody, including the authority that carried them out, and whether investigating bodies have any institutional or hierarchical connection between investigators and alleged perpetrators. 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. Furthermore, with reference to the Committee's previous recommendation,¹⁴ please provide information on the progress made in investigating the circumstances of the death in police custody of William Cloete on 1 April 2007.

16. Please provide disaggregated statistics regarding instances of inter-prisoner violence in the State party during the reporting period, including investigations and prosecution of offenders, and sentences or sanctions handed down. Please also provide statistics regarding the number of individuals in places of deprivation of liberty with HIV during the period under review, organized chronologically and disaggregated by gender.

17. Please provide information regarding the number of visits carried out by the Ombudsman, visiting judges and other independent national and international actors and organizations to places of deprivation of liberty during the reporting period. Please indicate if the Ombudsman is mandated to carry out unannounced visits to places of detention, and how many such visits took place. Please also provide information of the findings and recommendations of the Ombudsman and of visiting judges following their visits, and the actions taken by the State party in response.

Articles 12 and 13

18. Please provide data on all complaints of acts meeting the definition of torture or ill-treatment in the Convention received by the authorities during the reporting period, including those classified as assault, homicide or other offences under domestic law. 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 investigations, the number of investigations that resulted in criminal prosecution, the charges filed and sentences applied in cases of conviction, and the number that resulted in disciplinary sanctions and their type and duration. Please further provide data on the number of disciplinary actions against correctional officers for disciplinary offences against detainees under section 50 of the Correctional Services Act, 2012. Please describe the measures taken by the 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. Please provide information on any steps taken to increase the independence of the Internal Investigation Directorate, in line with the previous recommendation of the Committee.¹⁵ With reference to paragraph 71 of the State party's periodic report, please provide information on any protection or assistance measures provided under the Witness Protection Act, 2017 (Act No. 11 of 2017) to those who have witnessed crimes and are providing evidence to the authorities. Please also indicate whether the Witness Protection Advisory Committee has been established and operationalized, and provide information regarding its activities to date.

19. Please provide data on the complaints received concerning sexual abuse and exploitation of refugees by public officials or non-governmental workers at the Osire refugee settlement and indicate whether any of these complaints have resulted in investigations and

¹³ *Ibid*, para. 15.

¹⁴ *Ibid*, para. 18–19.

¹⁵ CAT/C/NAM/CO/2, para. 19.

prosecutions 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.

20. With reference to paragraph 14 of the State party's periodic report, and notwithstanding the state of emergency declared at the time, please provide information regarding any investigations into or prosecution of members of the Namibian police force regarding alleged acts of torture committed against suspected participants in the secession attempt in the Capivi region in 1999, including as recounted by a witness for the prosecution in the retrial of eight of the alleged secessionists in March 2019, and by the Inspector General of the Namibian police force, as recommended by the Committee.¹⁶

21. Please indicate steps taken by the 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 Southwest Africa People's Organization, and whether the alleged victims and their families have obtained redress.

Article 14

22. With reference to paragraph 74 of the State party's periodic report, please provide updated information on the number of requests for compensation made in relation to allegations of torture, the number of requests granted, and the amounts ordered and actually provided in each case. Noting the information provided in paragraph 75 of the State party's periodic report, please provide information on any ongoing reparation programmes, including specialised treatment of trauma and other forms of rehabilitation, provided to victims of torture or ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

Article 15

23. Considering the information provided in paragraphs 76 and 77 of the State party's periodic report, 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, as enshrined in article 12, paragraph 1 (f) of the Constitution, or other instances where evidence was found to be inadmissible under section 219A of the Criminal Procedure Act 51 of 1977. Please indicate whether, as previously recommended by the Committee,¹⁷ the authorities investigated claims that evidence admitted during the criminal trials of the alleged Caprivi secessionists was obtained through torture, describe the outcome of those investigations, and indicate whether any evidence was declared inadmissible on these grounds.

Article 16

24. 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 explicitly recognizing such acts as crimes. Please also indicate if any data on acts of cruel, inhuman or degrading treatment is collected. If so, please share this data with the Committee.

25. Please also provide information clarifying as to whether any instances remain whereby corporal punishment of children may be permitted in the State party, along with the steps taken to implement the Child Care and Protection Act, section 228 (3), which prohibits corporal punishment in schools. Please also provide information on the implementation of article 228 (3) of the Child Care and Protection Act, which prohibits violence against children in prisons and in police cells, and inform the Committee on whether the child justice bill has

¹⁶ *Ibid*, paras. 21 and 23.

¹⁷ CAT/C/NAM/CO/2, para. 21.

been adopted, and whether the State party has taken steps to establish an appropriate criminal juvenile justice system.

26. With reference to paragraph 33 of the State party's periodic report, please provide information as to whether forced sterilization is explicitly criminalized in the legislation of the State party. Please also indicate if there have been any prosecutions or other sanctions handed down in cases of forced sterilization.

27. 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

28. Please provide information regarding any considerations or discussions ongoing in the State party regarding the acceptance of the individual complaints procedure under article 22 of the Convention against Torture. Please provide also information regarding any considerations or discussions ongoing in the State party regarding the signature and ratification of the following international conventions:

(a) The Optional Protocol of the Convention against Torture;

(b) The Convention for the Protection of All Persons from Enforced Disappearance;

(c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

29. Given that the prohibition of torture is absolute and cannot be derogated from, not even within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps that were taken by the State party during the COVID-19 pandemic to ensure that its policies and actions comply with its obligations under the Convention. In addition, please specify the measures taken in relation to persons deprived of their liberty, including in places of confinement such as homes for older persons, hospitals or institutions for persons with intellectual or psychosocial disabilities.

30. Please describe the extent to which the implementation of the Prevention and Combating of Terrorist Activities and Proliferation Act, No. 4 of 2014, has been compatible with the State party's obligations under the Convention. Please provide information on the number of persons convicted under legislation adopted to combat terrorism; the legal safeguards and remedies available in law and in practice to persons suspected of terrorism or other security-related offences; and whether there have been complaints of the non-observance of international standards in applying measures to combat terrorism and, if so, what the outcome was.
