



NAMRIGHTS

**SPECIAL SHADOW REPORT SUBMITTED TO:
COMMITTEE AGAINST TORTURE
In Connection With Consideration of
Second Periodic Report by Namibia**

NAMIBIA AS A TORTURE EMPTIRE

WINDHOEK NAMIBIA OCTOBER 11 2016

ABOUT NAMRIGHTS INC

Formerly known as National Society for Human Rights (“NSHR”), NamRights Inc (hereinafter “NamRights”) is a private, independent, non-partisan and non-profit making human rights monitoring and advocacy organization. Founded on December 1 1989 by concerned citizens, the Organization envisages a world free of human rights violations. Its mission is to stop human rights violations in Namibia and the rest of the world.

NamRights bases its legal existence on the provisions of Article 21(1) (e) of the Namibian Constitution as well as Article 71 of the UN Charter, read with Economic and Social Council Resolutions 1296 (XLIV) and E/1996/31. The Organization is lawfully registered in terms of Section 21(a) of the Companies Act 1973 (Act 61 of 1973), as amended, as an association incorporated not for gain. Both African Commission on Human and Peoples' Rights of African Union (in 1993) and UN Economic and Social Council (in 1997) recognize NamRights as a *bona fide* human rights organization truly concerned with matters in their respective competence. The organization can be reached via this address:

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I. EXECUTIVE SUMMARY

1. The general objective of this Special Shadow Report is to facilitate and enhance Committee against Torture (“CAT”)’s understanding and appraisal of and concerning the actual and factual state of torture and other cruel, inhuman or degrading treatment or punishment (“TCIDT”) in State Party ever since Namibian independence on March 21 1990.
2. This Shadow Report takes notes of the contents of CAT document CAT/C/NAM/Q/2 containing lists of issues and or lists of issues prior to reporting dated 25 January 2010. This report also seeks to respond directly to certain statements contained in document CAT/C/NAN/2 dated 25 November 2015 as submitted to CAT by the Government of Namibia (“GoN”). NamRights has examined those documents and proposes vigorously that GoN (hereinafter also “State Party” or “State under Review (“SuR”)”) is not acting in good faith and is blatantly in breach of virtually all its obligations under UN Convention against Torture (“UNCAT”).
3. Due regard by CAT should be had to NamRights’ postulation that: (1) State Party pays lip-service with regard to its obligations under any other human rights treaties to which it is party; (2) State Party is a habitual defaulter and or a late submitter of its periodic reports under the various human rights treaties to which it is party; (3) State Party has (so far) failed to make due declarations¹ in terms of the *ad hoc* articles of several core UN human rights treaties to which it is party; (4) State Party has generally failed to comply with its undertaking to adopt effective legislative, judicial, administrative and other measures to give effect to the principles consecrated in any of the UN human rights treaties to

¹These declarations include but are not limited to those referred to under: Article 14 of International Convention on the Elimination of All Forms of Discrimination (“ICERD”); Articles 21 and 22 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”); Article 41 of ICCPR; and Article 3(2) of Optional Protocol to Convention on the Rights of the Child relating communications procedures (“OP-CRC-IC”).

which its party; (5) State Party has failed and or has expressly rejected and or generally ignored various numerous UN recommendations to ratify and or accede to several core human rights treaties;² (6) State Party persistently violates peremptory norms of customary international law; (7) State Party has, generally, displayed an often antagonistic and or discordant attitude towards UN system and this includes CAT; State Party is the leading³ proponent of the withdrawal by African States from International Criminal Court (“ICC”); and (8) State Party’s conduct in respect of its voting within UN system and other international forums relating to human rights has been inconsistent with its commitment “to promoting recognition and enforcement” of *inter alia* freedom from TCIDT as proclaimed in terms of paragraphs 1-3 of Part I of its present Second Periodic Report and as contemplated under Articles 2 and 16 and 1(3) of UNCAT and UN Charter, respectively.

4. NamRights appreciates the fact that State Party has, albeit perfunctorily, ratified and or acceded to most of the core UN human rights treaties.
5. Due consideration by CAT should also be had to *inter alia* several reports recently compiled on State Party by several Special Procedures and Thematic Mandates of UN Human Rights Council (“UNHRC”). Specific reference in this connection is being had to: (1) Special Rapporteur on the Rights of Indigenous Peoples⁴; (2) Special Rapporteur on Extreme Poverty and Human Rights⁵; (3) Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation⁶; (4) Special Rapporteur on Extra-judicial, Summary or Arbitrary

²These treaties include but are not limited to: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“CMW”); Convention relating to the Status of Stateless Persons; Convention on the Reduction of Statelessness; International Convention for the Protection of All Persons from Enforced Disappearance (“CED”); Optional Protocol to UNCAT (“OPCAT”); Optional Protocol to Convention on the Rights of the Child relating to Armed Conflict (“OP-CRC-AC”); Optional Protocol to International Covenant on Economic Social and Cultural Rights (“OP-ICESR”); UNESCO Convention against Discrimination in Education.

³<http://www.namibiansun.com/news/hage-leads-charge-against-icc>

⁴see UN Doc A/HRC/24/41/Add.1; <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/24/41/Add.1&Lang=E>

⁵*vide* UN Doc A/HRC/23/36/Add.1; http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/36/Add.1

⁶*vide* UN Doc A/HRC/21/42/Add.3; http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/21/42/Add.3

Executions⁷; (5) Working Group on Enforced Disappearances⁸ and Special Rapporteur on Human Rights Defenders⁹, to mention only a few.

6. In light of the above, this report seeks to conclude that State Party that the actual human rights situation on the ground in State Party is entirely inconsistent with the provisions of UNCAT and other UN treaties, generally. Hence the Report also concludes that State Party is, for all intents and purposes, a torture empire as torture and other ill-treatment continue to be practiced systematically in State Party. This Report, nonetheless, claims that State Party has both in theory and practice generally failed to take appropriate measures to give effect to the principles recognized in such treaties.

II. INTRODUCTION

7. Notwithstanding its absolute and non-derogable prohibition, TCIDT has occurred on a widespread or systematic basis in State Party both before and after Namibian independence on March 21 1990.¹⁰ Before independence TCIDT and other large-scale human rights infractions have been perpetrated by both SWAPO and South African (“SA”) security forces between 1966 and 1989.¹¹ German colonial forces have also committed genocide against ethnic Hereros and Namas between 1904 and 1908. Unlike in neighboring SA where

⁷see paragraph 56, UN Doc A/HRC/20/22/Add.4

⁸vide paragraphs 366-369, UN Doc E/CN.4/2006/56

⁹vide paragraphs 1138-1144, UN Doc E/CN.4/2006/95/Add.5

¹⁰“Katima nightmare: Human rights abuses widespread”, *The Namibian online*, August 11 1999; “Caprivi accused tell of torture”, *The Namibian online*, September 21 1999; “Mwilima ‘assaulted: allegations of abuses grow’”, *The Namibian online*, August 10 1999; “Hospital ‘gagged’ on Mwilima”, *The Namibian online*, August 11 1999; “Govt admits abuses: We’ve made mistakes, says Minister”, *The Namibian online*, August 12 1999; “Nam falling foul of international law”, *The Namibian online*, August 13 1999; “Geingob acknowledges mistakes”, *The Namibian online*, August 19 1999; “Churches alarmed: Urge Govt to act”, *The Namibian online*, August 23 1999; “Atrocities ‘ruining Namibia’s image’”, *The Namibian online*, August 25 1999; “Don’t test us, warns Shalli”, *The Namibian online*, August 27 1999; “Caprivi torturers may avoid censure”, *The Namibian online*, August 31 1999; “NSHR slams ‘Gestapo tactics’”, *The Namibian online*, September 1 1999; “Soldiers ‘ignored’ order on torture”, *The Namibian online*, September 1 1999; “Torture continues: More claims surface in Caprivi”, *The Namibian online*, September 3 1999; “Cops probe torture”, *The Namibian online*, September 7 1999 and “Lawyers question Govt’s commitment to rights”, *The Namibian online*, September 14 1999

¹¹<http://www.hrw.org/reports/1992/06/01/accountability-namibia>

a truth and reconciliation commission (“TRC”) has been established, in Namibia a TRC has been vehemently rejected by then Namibian President.¹² Thus impunity reigns supreme in the country as pre-independence perpetrators have never been brought to justice.¹³ After Namibian independence, TCIDT and many other large-scale and gross human rights violations have also been perpetrated with impunity in some parts of Ohangwena and Kavango regions as well as Caprivi Strip between 1994 and 2003.¹⁴

8. This Report focuses on certain key provisions which undergird UNCAT's absolute prohibition against TCIDT, including:

1. Articles 1 and 4-9: Measures Taken to Criminalize TCIDT

9. Articles 1 and 4-9 of UNCAT oblige the State Party to take effective legislative, administrative, judicial and other measures to give effect thereto. Specifically, the State Party is under the obligation to pass an *ad hoc* law making TCIDT a specific statutory crime which is punishable by appropriate penalties because of its grave nature as contemplated by Article 4(2) of UNCAT. However, as the State Party correctly admits in Part I, at paragraph 6, of its current Period Report, more than 18 years after the 1997 CAT recommendations to that effect there still exists no such law enacted in Namibia to criminalize TCIDT in the manner envisaged in UNCAT.

2. Articles 2 and 16: Obligation to Take Effective Action

10. It is common cause that the objective of Articles 2 and 16 of UNCAT is to protect both the dignity and the physical and mental integrity of all individuals. Again, the State Party has the primary duty to afford everyone under its *de*

¹²“Nujoma rejects calls for truth commission”, *The Namibian online*, November 28 2005 and “World: Africa: Namibia opposes truth commission”, *BBC News online*, Tuesday, July 13 1999 Published at 17:47 GMT 18:47 UK

¹³http://www.ediec.org/fileadmin/user_upload/Namibia/Impunity_still_reigns_in_Namibia.pdf

¹⁴“Enforced Disappearances: Discovery of ‘No Name’ Gravesites“, *NamRights*, August 30 2008; “Angola/Namibia: Human rights abuses in the border area”, *Amnesty International*, March 1 2000, Index Number: AFR 03/001/2000, and CCPR/CO/81/NAM, 2004, paragraph 12

facto and or *de jure* jurisdiction protection from TCIDT through *inter alia* the adoption of effective measures prohibiting TCIDT, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.

11. Article 2 (1) obliges the State Party to take legislative, administrative, judicial and or other actions, which are effective in reinforcing the absolute prohibition of this TCIDT scourge. In this case too, the State Party blatantly disregards virtually all its obligations of and concerning the absolute and non-derogable character of this prohibition which has, in any event, achieved the status of a peremptory norm of *jus cogens*.
12. Article 2(2) of UNCAT provides that, no derogation, whatsoever, is permissible and its provisions must remain in force even in state or public emergency situations such as those envisaged under Articles 26 and 4 of the Namibian Constitution (“NC”) and the International Covenant on Civil and Political Rights (“ICCPR”), respectively. Similarly, no justification or extenuating circumstances may be invoked as an excuse to violate Articles 2 and 16 of UNCAT for any other reasons, whatsoever, including those based on an order from a superior officer or public authority. Hence, Articles 2 and 16 also have the character of norms of *jus cogens* very much in same fashion as Articles 7, 10, 26 and 27 of ICCPR.
13. However, NamRights is gravely concerned that State Party is both procedurally and substantively in constant breach of all and or any of its obligations in respect of the absolute prohibition of TCIDT, including:

3. Article 3: Non-Refoulement

14. Article 3 of UNCAT expressly and strictly prohibits forcible return (*refouler*) of a ‘refugee or asylum seeker in any manner, whatsoever, to the frontiers of territories where his or her life or freedom would be threatened on account of

his or her race, religion, nationality, membership of a particular social group or political opinion.¹⁵The right not to be so returned is known as *non-refoulement*¹⁶ and forms the cornerstone of international refugee protection. In recognition of its fundamental status, no reservations, to *non-refoulement*, are permitted.

15. Article 3 is confined to cases where there are substantial grounds for believing that a complainant would be in danger of being subjected to TCIDT as defined in Article 1 UNCAT. Hence, Article 3 provides a broader protection against *refoulement*. This protection is an extension of *non-refoulement* as contemplated by 1951 UN Convention relating to the Status of Refugees (“CSR”) and ICCPR¹⁷ which also absolutely prohibit TCIDT.
16. The provisions of Article 3 apply to all States Parties to UNCAT both from which a refugee or asylum seeker is being expelled, returned or extradited and which the refugee or asylum seeker is being expelled, returned or extradited to.
17. However, State Party flagrantly violates Article 3 too. Since 1999 State Party has actively colluded with Governments of Botswana and Zambia to *refouler* Caprivi Strip separatists who fled to the two neighboring countries following widespread human rights abuses in that disputed territory. Cases in point:
18. Firstly, in 1998 and 1999 a large number of Caprivi Strip nationalists who had fled to Botswana and Zambia were forcibly returned and handed over to Namibian authorities. Referring to such *refoulement* in its *John Samboma et al v Namibia* Advisory Opinion in 2005, UN Working Group on Arbitrary Detention (“WGAD”) categorized *refoulement* of 13 Caprivi Strip nationalists from

¹⁵see Article 33 of 1951 UN Convention relating to the Status of Refugees (“CSR”)

¹⁶This is the absolute prohibition of forcible sending, expelling or otherwise returning of a refugee to territories or countries where his or her life and or freedom from TCIDT would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

¹⁷Article 7 of ICCPR

Zambia and Botswana as arbitrary and as being in contravention of Article 14 of ICCPR.¹⁸

19. Secondly, the imminent *refoulement* from Botswana of some 900 Caprivi Strip refugees, disguised as the implementation of the Cessation Clause of CSR, only stopped after the concerned refugees challenged it in a local High Court.¹⁹

4. Article 10: Training of Officials

20. State Party has also failed to implement both the provisions of Article 10 of UNCAT and previous CAT recommendation relating to education and training of members of its law enforcement officials and health personnel regarding the absolute prohibition of TCIDT. Since State Party has admittedly failed to enact an *ad hoc* local law defining TCIDT, it would be an absurdity to believe that State Party's law enforcement officials and medical officers have received any appropriate training in the investigation, prosecution and punishment of an undefined crime.
21. The very fact that acts of TCIDT have unabatedly continued to occur in State Party is *ipso facto* also conclusive circumstantial evidence that State Party has dismally failed to adopt effective legislative, judicial, administrative and other measures to prosecute TCIDT once it occurs or to prevent it from occurring at all.

5. Article 11: Establishment of Independent Bodies or Authorities

22. In line with State Party's failure to enact and *ad hoc* law criminalizing acts of TCIDT, there also exist no independent governmental bodies, whatsoever, consisting of persons of high moral character appointed to conduct inspection of detention centers and other places of imprisonment in State Party. Nor is there in State Party an independent authority established to deal with complaints

¹⁸*vide* paragraphs 6-8, *John Samboma et al. v. Namibia*, Working Group on Arbitrary Detention, Opinion No. 48/2005, U.N. Doc. A/HRC/4/40/Add.1 at 45 (2006)

¹⁹<http://www.mmegi.bw/index.php?aid=56743&dir=2016/january/06>

against the Police and or any other similar law enforcement officials accused of TCIDT. State Party's reluctance to accede to Optional Protocol to UNCAT ("OPCAT") can therefore also be understood in this context!

6. Articles 12 and 13: Measures to Combat Impunity

23. There also exist no specific measures adopted in State Party to combat impunity. The contrary, however, is true. In order to commit untold atrocities against alleged Caprivi Strip secessionists, then Namibian President, on August 3 1999, promulgated State of Emergency ("SoE") Regulations Proclamation 1999 (Proclamation 24 of 1999) which effectively immunizes members of security forces from prosecution.²⁰
24. State Party's refusal to prosecute the more than 40 members of its security forces, who have committed untold atrocities in Caprivi Strip between 1999 and 2003, must be understood in the context of SoE Proclamation 24 of 1999. State Party's reliance on non-existent so-called Policy of National Reconciliation and Administrator General ("AG") Amnesty Proclamation 1989 (AG 13 of 1989) for its failure to promptly and impartially investigate pre-independence cases of enforced disappearances ("ED") of former members of SWAPO should be understood in this context. Failure by State Party to promptly and impartially probe cases of enforced disappearances ("ED") committed in the context of the northern border conflict should also be understood in this context.

7. Article 14: Redress

25. Article 14 of UNCAT requires the State Party to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." It is common cause to note that the term "redress" entails the doctrines of "effective remedy" and "reparation" which encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

²⁰vide "Limited Liability", Section 12 of Proclamation 24 of 1999

26. It is also common cause to note that the obligation of the State Party to provide effective remedy under Article 14 is both procedural and substantive. In order to meet its procedural obligation, State Party is required to enact effective legislation and establish *ad hoc* complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to, and awarding, redress for victims of TCIDT and to ensure that such mechanisms and bodies are accessible to all victims. To satisfy its substantive obligation, the State Party is required to ensure that victims of TCIDT obtain full and effective redress and reparation. This includes effective compensation and the means for as full rehabilitation as possible.
27. However, in line with the State Party's general attitude towards international human rights treaties, in this case too there are no effective *ad hoc* mechanisms, whatsoever, ensuring that victims of TCIDT obtain effective remedy.

III. COMMENTS ABOUT SPECIFIC STATE PARTY EXPLANATIONS

28. NamRights wishes to clarify several issues about which State Party has provided CAT with mendacious and or obfuscating information, including:

1. TCIDT and Disappearances of former Members of SWAPO²¹

29. In order to justify its failure to comply with CAT recommendation relating to prompt and impartial investigations to determine the fate or whereabouts of former SWAPO members who were tortured and caused to disappear in camps in Angola and Zambia, State Party sought to hide behind South African amnesty Proclamation 1989 (AG 13 of 1989) as well as the so-called Policy of National Reconciliation. In fact, however, AG 13 of 1989 constitutes a prohibited statute of limitation.

²¹*vide* para. 15-16 and 131-134, Part I, UN Doc. CAT/C/NAM/2

2. Detention *Incommunicado* of Caprivi Strip High Treason Trialists²²

30. State Party also categorically denies that accused Caprivi trial-awaiting prisoners have been held *incommunicado* as “alleged by the Committee against Torture”. However, irrefutable and extensive evidence exist that Caprivi Strip treason trialists have been held *incommunicado* especially during SoE which was declared on August 2 1999. One of the primary objectives of SoE was to conceal and cover-up evidence of *inter alia* systematic TCIDT. The attention of CAT is drawn to the contents of paragraph 49 of the attached ***Namibia Dossier Containing Evidence of Complicity and Impunity for Torture and Ill-Treatment*** as well as to a special Amnesty International report entitled ***Namibia: Justice Delayed is Justice Denied—The Caprivi Treason Trial of August 2003***.²³

3. Campaigns to Prevent TCIDT²⁴

31. State Party was requested by CAT to provide updated information on the administrative directives which it has adopted aimed at preventing TCIDT perpetrated by Police. NamRights is not aware of any suspension of Police officers accused of TCIDT. Nor are there any regular awareness campaigns conducted to prevent TCIDT. Moreover, acts of TCIDT have continued unabatedly throughout the country regardless of the 2007 Human Rights Directive²⁵ which Namibian Police Inspector General had issued to Police commanders to prevent TCIDT.

²²*vide* para. 44-46, Part I, UN Doc. Doc. CAT/C/NAM/2

²³

https://www.google.com.na/?gws_rd=ssl#q=Namibia:+Justice+delayed+in+justice+denied:+The+Caprivi+Treason+Trial%2C+Amnesty+International

²⁴*vide* para. 107-109, Part I, UN Doc. Doc. CAT/C/NAM/2

²⁵<http://www.namibian.com.na/index.php?id=35848&page=archive-read>

4. Composition of Inter-Ministerial Committee of Human Rights²⁶

32. State Party also claims that its Inter-Ministerial Committee (“IMC”) on Human Rights and Humanitarian Law consists of *inter alia* “non-governmental organizations that deals [sic] with human rights and humanitarian law issues”. NamRights is one such NGO but it is not part of IMC. Most likely, State Party is referring to surrogate NGOs.
33. Nor is NamRights aware of the existence in State Party of any mechanism allowing victims to report TCIDT cases to the relevant authorities.

5. Compelling Evidence of State Witness²⁷

34. State Party also seeks to mislead CAT about compelling evidence that both accused persons and state witnesses in the marathon Caprivi Treason Trial have been extensively subjected to TCIDT. The kind attention of CAT is drawn to *inter alia* paragraph 49, footnote 159, of the attached *Namibia Dossier Containing Evidence of Complicity and Impunity for Torture and Ill-Treatment*.

6. Discovery of Mass Graves²⁸

35. NamRights is also not surprised by State Party denial about the existence of several mass graves discovered on both sides of the Angolan-Namibian border in 2008. As attached document entitled “**Namibia: Enforced Disappearances; Discovery of “no name’ Gravesites”** of November 11 2009 demonstrates, there is irrefutable evidence of and concerning such mass graves in State Party.

7. Conflicting Statements about Ohauwanga Mass Grave

36. NamRights is also not astonished that State Party obfuscates and gives contradictory information concerning the number of people buried in the mass

²⁶*vide para.* 110-113, Part I, UN Doc. Doc. CAT/C/NAM/2

²⁷*vide para.* 110-113 and 135-136, Part I, UN Doc. CAT/C/NAM/2

²⁸*vide para.* 110-113 and 137-139, Part I, UN Doc. CAT/C/NAM/2

grave discovered at Ohauwanga village situated on the Angolan-Namibian border.

37. Through a Ministerial Statement issued in Parliament on October 1 2008 then Safety and Security Minister claimed that “a thorough and methodological investigation”, which had been conducted at the Ohauwanga mass grave, there were only 5 people--all of them victims of apartheid South African authorities in 1972--who were buried there. However, in another statement issued on May 4 2011, Namibian President claimed that altogether 12 people were buried in the same mass grave! It would be advisable for State Party to clarify these contradictory statements.

IV. CONCLUDING REMARKS

38. This report seeks to conclude that the actual human rights situation on the ground in State Party is generally inconsistent with the provisions of UNCAT and other UN treaties. Hence this Report also concludes that State Party is, for all intents and purposes, a torture empire as acts of TCIDT are being committed systematically in State Party.
39. The contents of State Party’s Second Periodic Report are generally at variance with the guidelines and requirements for reporting in terms of *inter alia* Article 19 of UNCAT. Instead, State Party’s Report is generally a rehearsal and recitation of the human rights principles consecrated under Namibian Constitution (“NC”) and or subordinate national law. Very little, if any, is said about the factors which complicate and or nullify the enjoyment of the rights which UNCAT protects and promotes. Even more so, very little, if any, is being said in said Report about the factual and actual state of TCIDT on the ground in State Party.

A. General Failure to Adopt Measures

40. State Party has generally failed to adopt effective legal, judicial, administrative and other measures to prevent, investigate, and punish the widespread acts of TCIDT occurring under its jurisdiction. Specifically, State Party has (so far) failed to incorporate UNCAT into its national penal laws as recommended by, among others, CAT during its May 1997 session.²⁹
41. In addition, the State Party has so far deliberately and or arrogantly also failed to make the requisite declarations in terms of Articles 21 and 22 of UNCAT that it recognizes the competence of CAT to receive and consider petitions from other States Parties and individuals claiming State Party is not fulfilling its obligations under UNCAT.
42. Furthermore, State Party has also conceitedly failed and or ignored specific UN requests to comply with the 9 CAT recommendations resulting from consideration of State Party's first Periodic Report during May 1997 session.³⁰ These include a recommendation to create a center for physiological and psychological rehabilitation of victims of TCIDT in the State Party.
43. Moreover, State Party has also failed and or ignored to heed the 2004 HRC recommendations relating to the establishment "an effective mechanism for the investigation and punishment"³¹ of acts of TCIDT, extrajudicial killings and enforced disappearances ("ED").³² These violations have been perpetrated with impunity in State Party's northern border³³ areas between 1992 and 2003.
44. Coincidentally, State Party has (not yet) ratified the Optional Protocol to UNCAT ("OPCAT") whose principal objective is to establish in State Party a

²⁹vide Report of the Committee against Torture, General Assembly, Official Records, 52nd Session, Supplement No. 44 (A/52/44) paragraphs 241-251

³⁰vide Report of the Committee against Torture, General Assembly, Official Records, 52nd Session, Supplement No. 44 (A/52/44) paragraphs 241-251

³¹vide CCPR/CO/81/NAM, August 2004, paragraph 12

³²<http://www.nshr.org.na/downloadfiles/press/NamibiaGgravesiteFind.pdf>

³³<https://www.amnesty.org/en/documents/AFR03/001/2000/en/>

system of regular visits by independent international and national bodies to places of detention and imprisonment in order to prevent TCIDT.

45. Numerous incidents and situations of TCIDT have occurred and continued to occur in State Party both before and after independence on March 21 1990. These incidents and situations include, but are not limited to, the fact that:
46. Hundreds of former members of SWAPO, who were systematically subjected to TCIDT and ED prior to Namibian independence, have remained unaccounted for to date.³⁴
47. State Party has relentlessly and sometimes even violently opposed NamRights-led campaign relating to the establishment of a Truth and Reconciliation Commission (“TRC”) to probe past abuses of human rights committed both by apartheid South African and SWAPO forces during the struggle for and against Namibian independence.
48. Thousands of citizens and other persons continue to be held under torturous and abominable conditions in Police cells and correctional institutions throughout State Party.
49. State Party has also failed to ensure that adequate criminal and civil sanctions are imposed on individuals, including senior and high-ranking State Party officials and traditional leaders, who continue to actively participate, encourage or acquiesce in the harmful traditional practice of *Olufuko*³⁵ and other sexual initiations and or early girl-child marriages. This state of affairs is in blatant disregard of the 2012 recommendations from UN Committee on the Rights of the Child (“CRC”).³⁶

³⁴http://www.ediec.org/fileadmin/user_upload/Namibia/Impunity_still_reigns_in_Namibia.pdf

³⁵http://www.unicef.org/crc/files/OLUFUKO_Phil_ya_Nangoloh_sw%281%29.pdf

³⁶*vide* CRC/C/NAM/CO.2-3, October 16 2012, paragraphs 42-43

50. Owing to State Party's failure to exercise due diligence to prevent, investigate, prosecute and punish the so-called passion killings of women and other specific forms of gender-based violence ("GBV") in the country, State Party and or its officials should be considered as authors, complicit or otherwise, responsible for consenting to, or acquiescing in, such impermissible acts.

B. State Party as Torture Empire

51. Due CAT attention is also drawn to the attached ***Namibia Dossier Containing Evidence of Complicity in and Impunity for Torture and Ill-treatment***. This document reveals the existence in State Party of what amounts to a consistent pattern of gross, flagrant or mass violations of human rights which are prohibited under Articles 2, 3 and 16 of UNCAT as well as Articles 6, 7, 10 and 26 of ICCPR.
52. The dossier, which was completed on May 5 2014, is the product of an extensive research which NamRights had undertaken over a period of some six months into: (1) the objective of the nationally-televised rancorous statement³⁷ by State Party's President. The significance of such statement is that it was made on November 7 1998, which was nearly one year prior to the alleged secessionist attack in Caprivi Strip on August 2 1999; (2) the purpose of the State of Emergency ("SoE") which State Party's President declared following the said attack; (3) the crimes committed during and even long after SoE; (4) the conduct of the Office of the Prosecutor General during and after SoE; and, (5) the appointment of incumbent Prosecutor General *per se*.
53. The dossier also seeks to demonstrate at paragraphs 1 to 3 that SoE was deliberately declared as an incentive for ensuring wholesale commission, with utmost impunity, of TCIDT and other international crimes (paragraphs 3, 29, 30, 36, 37, 48 and 50).

³⁷"Nujoma Denounces Caprivi Secessionists", Cabinet Briefing/Speech, *New Era*, November 13-15 1998, p.8

54. The dossier lists at least 8 reasons why and how SoE is entirely repugnant to both national and international norms on Human Rights and Rule of Law (paragraphs 38, 46 and 49).
55. The document also demonstrates that SoE was deliberately declared to conceal and cover-up the evidence of systematic acts of TCIDT and other internationally wrongful acts with the apparent view to ensure that Caprivi Strip separatists are prosecuted and found guilty at all and any cost (paragraph 49).
56. The dossier contains clear and convincing evidence on how and or why the office of the Prosecutor General is complicit in the commission and or conspiracy to commit acts of TCIDT against alleged Caprivi secessionists. The dossier lists at least 16 reasons regarding how and why Prosecutor General is so complicit in TCIDT (paragraphs 48, 56 to 73).
57. The dossier also does not list seven grounds about why and how the incumbent Prosecutor General, at the time of her appointment, was a neither fit nor proper person to be entrusted with the responsibilities of Prosecutor General (paragraphs 74 to 87). There are also 7 reasons why and how the appointment of the incumbent Prosecutor General was a well-calculated political move to stifle an independent, impartial, objective, competent and professional prosecutorial authority in State Party (paragraphs 88 to 95).
58. The document consistently and persistently emphasizes that TCIDT is strictly and absolutely prohibited in all and any circumstances (paragraphs 22-25) and that those who commit this heinous crime, including those who are complicit in this crime, are viewed as enemy of humankind (paragraphs 26 and 108). As such, they must be prosecuted wherever and or whenever they may be found (paragraphs 99 to 101).
59. In final analysis, the document seeks to demonstrate that the overall purpose and overarching aim of SoE was “to mete out an appropriate punishment to the

terrorists as well as to combat and destroy the secessionists without mercy” (paragraphs 1, 4, 7, 12, 17 and 27) in order to suppress the struggle for the right of the people of Caprivi Strip to self-determination.

60. On May 19 2015 Namibian Police Force Inspector-General admitted that some of the suspects in the marathon Caprivi High Treason Trial “have endured the worst forms” of TCIDT.³⁸

V. MONIST APPROACH

61. As State Party correctly asserts at paragraphs 8 and 9 of Part I of its present Report, UNCAT is part of its national law owing to State Party’s Monist Approach. A State Party following this Approach automatically accepts international law as part of its municipal law, and hence it is not required to pass laws expressly incorporating international law within its domestic legal system.
62. Furthermore, in terms of the Monist doctrine, international law is hierarchically superior over national law and in case of conflict international law prevails. In this connection, there is no point for State Party to hide behind its deliberate failure to comply with the provisions of UNCAT. Moreover, in terms of Article 27 of the Vienna Convention on the Law of Treaties (“VCLT”) a State Party may not invoke the provisions of its (non-existent) internal law as justification for its failure to perform a treaty.

VI. SUPPORTING DOCUMENTS

63. In support of the statements contained in this Special Alternative Report, the following documents will be attached:

³⁸ https://www.google.com.na/?gws_rd=ssl#q=Treason+suspects+were+tortured+%E2%80%93+Ndeitunga

- 63.1. *Namibia Dossier Containing Evidence of Complicity in and Impunity for Torture and Ill-treatment*, “DOSSIER”
- 63.2. State of Emergency Proclamation 1999 (Proclamation 24 of 1999), “PROCLAMATION”
- 63.3. Namibia: Enforced Disappearances: Discovery of ‘No name’ Gravesites,
- 63.4. Namibia: Enforced Disappearances: Discovery of ‘No name’ Gravesites, Addendum 1, “ADDENDUM”

VII. RECIPIENT OF SPECIAL ALTERNATIVE REPORT

64. The direct recipient and beneficiary of this Special Alternative Report is:

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