



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

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## Committee against Torture

### Concluding observations on the second periodic report of Namibia\*

1. The Committee against Torture considered the second periodic report of Namibia (CAT/C/NAM/2) at its 1478th and 1481st meetings (see CAT/C/SR.1478 and 1481), held on 18 and 21 November 2016, and adopted the present concluding observations at its 1496th meeting, held on 1 December 2016.

#### A. Introduction

2. While welcoming the second periodic report of Namibia, the Committee regrets that it was submitted with a 16-year delay, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following the consideration of the initial report in 1997. The Committee takes note of the delegation's assurances that henceforth the State party will submit timely and regular reports as required under the Convention.

3. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and submitting its periodic report under it, as it improves cooperation between the State party and the Committee and focuses the examination of the report and the dialogue with the delegation. The Committee welcomes the dialogue held with the delegation of the State party during the examination of the second periodic report.

#### B. Positive aspects

4. The Committee welcomes the ratification of the following international instruments by the State party:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 4 December 2007;

(b) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, on 16 April 2002;

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\* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).



- (c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 26 May 2000;
- (d) The African Charter on the Rights and Welfare of the Child, on 23 July 2004;
- (e) The Rome Statute of the International Criminal Court, on 25 June 2002;
- (f) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on 16 August 2002;
- (g) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 16 August 2002;
- (h) The United Nations Convention against Transnational Organized Crime, on 16 August 2002;
- (i) The International Labour Organization Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182), on 15 November 2000.

5. The Committee also welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

- (a) The Combating of Rape Act, No. 8 of 2000;
- (b) The Criminal Procedure Amendment Act, No. 24 of 2003;
- (c) The Combating of Domestic Violence Act, No. 4 of 2003;
- (d) The Education Act, No. 16 of 2001;
- (e) The Child Care and Protection Act, No. 3 of 2015.

6. The Committee further welcomes the following initiatives taken by the State party to amend its policies, programmes and administrative measures to give effect to the Convention:

- (a) The National Human Rights Action Plan 2015-2019;
- (b) The prevention of torture campaign, launched on 19 March 2015;
- (c) The National Plan of Action on Gender-Based Violence 2012-2016.

7. The Committee welcomes the visits carried out in 2011 by the Special Rapporteur on the human rights to safe drinking water and sanitation, and in 2012 by the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on extreme poverty and human rights.

## **C. Principal subjects of concern and recommendations**

### **Definition of torture and cruel, inhuman or degrading treatment**

8. While welcoming the State party's recognition of the importance of incorporating an article providing for the absolute prohibition of torture in its legislation and also welcoming the bill on prevention and combating of torture, the Committee remains concerned that until the bill has been adopted, Namibian legislation does not contain a definition of torture. The Committee is also concerned that cruel, inhuman and degrading treatment is not fully covered in the bill, such as in the definition of the term "victim" (arts. 1 and 16).

9. **The State party should expedite the adoption of the bill on prevention and combating of torture, ensuring that the definitive version of the law includes a definition of torture that is in accordance with the provisions of the Convention, and that the acts of cruel, inhuman or degrading treatment are fully considered in the law.**

#### **Fundamental legal safeguards**

10. The Committee is concerned at the fragmented and incomplete recognition of fundamental legal safeguards in the State party's legislation, which relies heavily on standards established by case law that do not encompass all fundamental legal safeguards. That is particularly the case with regard to the rights of persons deprived of liberty: (a) to be informed of their rights in a language they understand; (b) to promptly contact a family member or any other person of their choice; (c) to have prompt access to a medical examination by an independent doctor; and (d) to be brought before a court within a maximum of 24 hours. Furthermore, the Committee is concerned at reports that numerous persons are held in custody beyond 48 hours and do not effectively benefit from the assistance of a lawyer from the outset of detention (art. 2).

11. **The State party should ensure that all fundamental legal safeguards are guaranteed by appropriate means of regulation and not merely by jurisprudence. The State party should also ensure that all detainees are afforded, in law and in practice, all fundamental legal safeguards from the outset of detention, according to international standards, including:**

(a) **The right to be promptly informed, in a language they understand, of their rights, the reasons for arrest and the charges laid against them;**

(b) **The right to promptly contact a family member or any other person of their choice;**

(c) **The right to have prompt and confidential access to a qualified and independent lawyer, or to free legal aid when needed;**

(d) **Access to a medical examination by an independent doctor;**

(e) **The right to be promptly brought before a competent, independent and impartial court within a maximum of 48 hours;**

(f) **The right to have the legality of their detention challenged through an habeas corpus procedure and to have their detention recorded in a register at the place of detention and in a central register of persons deprived of liberty.**

#### **National human rights institution**

12. While taking note of the explanation concerning budgetary restraints provided by the delegation, the Committee remains concerned at the lack of information regarding the implementation of the Ombudsman's recommendations, most of which do not require expenditure by the State. The Committee is also concerned at the reportedly limited mandate of the Office of the Ombudsman, particularly in terms of its capacity to carry out sufficient, regular and unannounced visits to places of deprivation of liberty and to recruit its own personnel (art. 2).

13. **The State party should amend the Ombudsman Act of 1990 in order to enhance the mandate of the Office and give it greater independence, particularly with regard to conducting regular unannounced visits to places of deprivation of liberty. The State party should ensure that the Office of the Ombudsman has adequate financial resources to recruit its own staff and effectively discharge its functions, in accordance with the principles relating to the status of national institutions for the promotion and**

**protection of human rights (the Paris Principles), and that the recommendations emerging from the Ombudsman's Office are effectively implemented.**

#### **Pretrial detention**

14. The Committee welcomes the efforts made by the State party to reduce long periods of pretrial detention, inter alia by setting up two special courts at the magistrate court level in the district of Windhoek, and the magistrate's project, through which a total of 52 aspirant magistrates and prosecutors were trained between 2008 and 2012. However, the Committee remains concerned at reports of the excessively slow functioning of the judiciary and of the continuation of unacceptably lengthy periods of pretrial detention, which are harmful for detainees. The Committee is also concerned that juvenile offenders are reportedly often held together with adults in pretrial detention.

**15. The State party should expedite the modernization and reform of the justice system and take measures to reduce the duration of pretrial detention by considering recruiting additional judges and using non-custodial penalties and alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). The State party should ensure the availability of sufficient youth facilities so that all juveniles in conflict with the law are held separately in pretrial detention.**

#### **Conditions of detention**

16. While taking note of the State party's plans to increase its detention capacity, the Committee is concerned that the figures provided in the State party's report show an uneven distribution of the prison population among the correctional facilities in the country, with overcrowding in some, while others are not fully occupied. The Committee is also concerned at reports that some convicted detainees are held in police stations and kept together with pretrial detainees. The Committee is deeply concerned at reports of the high rate of HIV among prisoners, the reluctance to take measures to prevent HIV transmission, and the lack of official data on the total number of infected prisoners and their access to antiretroviral medicine. The Committee is further concerned at reports of understaffing and a lack of food and access to medical services in correctional facilities, which particularly affects inmates who are ill.

**17. The State party should strengthen its efforts 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), by:**

- (a) Reducing the rate of overcrowding by increasing detention capacity and efficiently redistributing inmates among all detention centres;**
- (b) Separating pretrial detainees from convicted detainees;**
- (c) Putting in place mechanisms and measures to effectively prevent and control the further spread of HIV in correctional facilities, while respecting the human rights of affected detainees;**
- (d) Increasing the number of prison staff;**
- (e) Improving the quality and quantity of food and water, as well as the health care provided to detainees and prisoners, particularly with regard to detainees with HIV.**

### **Investigations into allegations of torture or other cruel, inhuman or degrading treatment or punishment**

18. While taking note of the establishment of the Internal Investigation Directorate to deal with complaints against members of the Namibian police force, the Committee is concerned at the Directorate's lack of independence. The Committee is also concerned at the lack of information on the number of complaints, investigations, prosecutions and convictions for torture or other cruel, inhuman or degrading treatment or punishment among members of the police force. The Committee remains concerned at the lack of investigation following the death in police custody of William Cloete on 1 April 2007 (art. 12).

**19. The State party should ensure that all deaths in custody and all allegations of torture and ill-treatment are investigated promptly, thoroughly and impartially by independent bodies, and that there is no institutional or hierarchical connection between the investigators and the alleged perpetrator. The State party should punish those convicted with sentences proportional to the gravity of their offence.**

### **Caprivi high treason trials**

20. While noting that free legal aid was provided to the accused in the Caprivi high treason trials, the Committee is concerned at reports that the detainees were denied other fundamental legal safeguards and were severely tortured during the trials. The Committee is also concerned at the lack of investigation into whether evidence used in the trials was obtained under torture. Furthermore, the Committee is concerned at the long pretrial detention periods, in some cases amounting to more than 15 years, and at cases of death in detention. The Committee is also concerned at the lack of investigation following the recent admission by the Inspector General of the Namibian police force that some of the suspects in the Caprivi high treason trials had been subjected to torture (arts. 2, 6 and 15).

**21. The Committee urges the State party to expedite the Caprivi high treason trials, guaranteeing that all detainees receive a fair and speedy trial and making sure that evidence obtained under torture is dismissed. The State party should take effective measures immediately to ensure that all allegations of denial of fundamental legal safeguards, acts of torture and death in detention are effectively and impartially investigated.**

### **Impunity for acts of torture**

22. While noting the State party's policy of national reconciliation, which was adopted after independence and enshrined in the preamble of the Constitution, the Committee is concerned that serious allegations of torture committed during the liberation struggles have not been investigated, which could lead to impunity for those crimes. The Committee is also concerned at reports of extensive human rights violations, including torture, committed during the state of emergency declared after the secessionist attempt in the Caprivi region in August 1999. Furthermore, the Committee is concerned that the state of emergency provided for statutes of limitations for serious crimes such as torture and thus precluded any investigation into and prosecutions for acts committed during that period. The Committee is also concerned at reports that no investigations have been carried out into recent allegations of acts of torture committed by law enforcement officials (art. 2).

**23. The Committee reminds the State party that the absolute prohibition of torture is a recognized norm of *jus cogens* and that article 2 (2) of the Convention makes clear that no exceptional circumstances whatsoever may be invoked as a justification of torture. Subjecting acts of torture to amnesty regulations or statutes of limitations for prosecution contradicts the object and purpose of the Convention and the**

**Committee's jurisprudence. The State party should ensure that all allegations of acts of torture and ill-treatment are investigated, prosecuted and punished, including those committed during the liberation struggle and the state of emergency of August 1999. The State party should also ensure that all allegations of torture perpetrated by law enforcement officials are investigated and the officials found guilty prosecuted and punished.**

#### **Universal jurisdiction**

24. While noting that the bill on prevention and combating of torture provides for universal jurisdiction for the crime of torture, the Committee is concerned that, under article 8 (2) of the bill, the prosecution of a public official for torture committed outside Namibian territory is subject to the written authority of the Prosecutor-General (art. 5).

**25. Before adopting the bill on prevention and combating of torture, the State party should amend article 8 (2) in order to ensure that the exercise of universal jurisdiction in cases of torture is not left to the sole discretion of the Prosecutor-General.**

#### **Non-refoulement**

26. The Committee notes that the bill on prevention and combating of torture provides for the prohibition of refoulement, in accordance with the Convention, and that the delegation gave assurances that no one has been expelled to a country where they risk being subjected to torture. However, the Committee remains concerned that section 24 (1) of the Namibia Refugees (Recognition and Control) Act, No. 41 of 1999, subject to the provisions of section 26, provides for the possibility of expelling recognized refugees and protected persons if it is in the interest of, inter alia, national security. The Committee is also concerned that the State party has still not ratified the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa or acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. While appreciating the information provided by the delegation on the number of Congolese refugees currently present in the State party's territory, the Committee regrets the lack of information on their legal status and the number and origin of those who have received removal orders (exit notices). The Committee is further concerned that the Immigration Control Act, No. 7 of 1993, excludes a person convicted of sodomy from entering into Namibia (art. 3).

27. **The Committee recommends that the State party:**

(a) **Repeal section 24 (1) of the Namibia Refugees (Recognition and Control) Act, No. 41 of 1999, in order to respect its obligations under article 3 of the Convention, which establishes an absolute prohibition of refoulement when there is a risk of torture;**

(b) **Ratify 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;**

(c) **Repeal any removal orders (exit notices) that have been issued to asylum seekers from the eastern region of the Democratic Republic of the Congo and allow those asylum seekers to remain in Namibia until the situation in the Democratic Republic of the Congo is favourable for repatriation on a voluntary basis;**

(d) **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;**

- (e) **Repeal the provisions in the Immigration Control Act, No. 7 of 1993, that exclude a person convicted of sodomy from entering Namibia.**

**Sexual and gender-based violence, including domestic violence and violence against children**

28. While noting the State party's efforts to raise awareness about violence against women and children, the Committee shares the concerns of the Human Rights Committee about the high number of women who are murdered by their intimate partners (see CCPR/C/NAM/CO/2, para. 23), and about child victims of sexual violence, including rape. The Committee is also concerned at the State party's lack of response about the allegations of rape of San women. The Committee is further concerned at the low rate of prosecution of perpetrators of rape, the lack of a mechanism for immediate protection orders and reports that cases of rape are being decided by customary courts, which do not impose criminal liability and may not provide full compensation to victims.

29. **The State party should strengthen its efforts to raise awareness about violence against women and children. It should ensure that children are educated about violence against women and children by training teachers, using new educational technology and developing training courses, curricula and textbook content. The State party should ensure that prompt, impartial and effective investigations are conducted into allegations of violence, including rape, against children and all women, including San women, and that perpetrators are prosecuted and punished. The State party should provide specialized training to raise awareness about sexual violence among the police and law enforcement forces. It should take effective measures to put in place special programmes and separate sanctions when children are the victims of violence and, in accordance with the principle of the best interest of the child, take into consideration their possible stigmatization, their special need for confidence-building measures and their lack of access to justice. The State party should strongly discourage the settlement of sexual violence cases outside the formal justice system and ensure that all courts, including customary courts, function in accordance with respect for the rule of law and international human rights standards.**

**Lesbian, gay, bisexual, transgender and intersex persons**

30. The Committee is concerned at reports that lesbian, gay, bisexual, transgender and intersex persons are subject to ill-treatment in detention, and that transgender women have been placed together with male detainees, exposing them to a high risk of sexual assault. The Committee is also concerned at reports of the failure to investigate, prosecute and punish violence, harassment and ill-treatment, rape and murder of lesbian, gay, bisexual, transgender and intersex persons. The Committee is further concerned by reports of abuse of gay men by law enforcement personnel and by the stigmatization they suffer, especially taking into consideration the current criminalization of sexual acts between consenting adult men.

31. **The State party should take all necessary measures to protect lesbian, gay, bisexual, transgender and intersex persons from threats and any form of violence, particularly in places of detention, including by separating transgender women from male detainees. The State party should ensure that violence against lesbian, gay, bisexual, transgender and intersex persons is promptly, impartially and thoroughly investigated and the perpetrators prosecuted and punished. The State party should consider decriminalizing sexual acts between consenting adult men.**

### **Harmful traditional practices**

32. While taking note of the information provided by the delegation on steps taken to ensure that traditional practices respect human dignity, the Committee remains concerned at the prevalence of traditional practices that are harmful to women and girls. It is particularly concerned about the ritual of Olufuko, which involves child marriage and sexual initiation rites, and about the lack of investigation into such cases and the lack of prosecutions and criminal punishment of perpetrators.

**33. The State party should continue to conduct intensive awareness-raising campaigns in communities and among all Namibians to inform them about the effects of harmful traditional practices. The State party should strengthen its efforts to eliminate harmful traditional practices by criminalizing and investigating them and prosecuting alleged perpetrators, including traditional leaders who are involved in and promote such practices.**

### **Forced sterilization of people with HIV**

34. The Committee takes note of the directive issued by the Ministry of Health and Social Services on the provision of family planning methods and sterilization, in the wake of the Supreme Court decision in the case of *Government of Namibia v. LM and others*, which declared the forced sterilization of people with HIV to be unconstitutional. However, the Committee remains concerned at the lack of information on specific legislative and administrative measures taken by the State party to bring practice in line with the Constitution and to prevent and criminalize the forced sterilization of people with HIV.

**35. The Committee recommends that the State party adopt legislative and policy measures to prevent and criminalize the forced sterilization of people with HIV, particularly by clearly defining the requirement of free, prior and informed consent with regard to sterilization and by raising awareness among medical personnel of that requirement.**

### **Corporal punishment of children**

36. While welcoming the adoption of the Child Care and Protection Act, No. 3 of 2015, which complements the Education Act, No. 16 of 2001, and penalizes corporal punishment in the home, in the criminal system and in alternative care settings, the Committee remains concerned at the lack of information regarding its enforcement and implementation.

**37. The State party should ensure that all laws prohibiting corporal punishment are effectively implemented, all allegations of corporal punishment investigated and perpetrators prosecuted and punished. The State party should also conduct awareness-raising campaigns about the harmful effects of corporal punishment on children and inform the public that such acts are prohibited.**

### **Violence against persons selling sexual services**

38. The Committee is concerned at allegations and reports of abuse and ill-treatment of persons selling sexual services by certain rogue elements of the Namibian police and by some medical personnel. The Committee is also concerned at reports that murders of persons selling sexual services have not been investigated and the perpetrators not prosecuted or punished.

**39. The State party should take all effective legislative, administrative, judicial and other measures to prevent persons selling sexual services from being subjected to torture and ill-treatment, investigate reports of such acts and prosecute and punish the perpetrators. The State party should also, as a matter of urgency, investigate any**

reports of murder of persons selling sexual services and prosecute and punish all persons found guilty of such crimes.

#### **Human trafficking**

40. The Committee notes with concern that, while the State party has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, there is still no specific anti-trafficking legislation in place. The Committee is also concerned that the number of prosecutions is low, despite reports that women and children are trafficked in the territory of the State party.

**41. The State party should adopt anti-trafficking legislation that enables the prosecution of offenders in line with international standards, and investigate all persons suspected of having committed human trafficking and prosecute and punish them if found guilty.**

#### **Data collection**

42. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel, as well as on deaths in custody, gender-based violence and human trafficking.

**43. The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment, gender-based violence and human trafficking, as well as on means of redress, including compensation and rehabilitation provided to victims.**

#### **Training**

44. While taking note of the information provided by the State party on training in constitutional and human rights matters provided to the Namibian police, the national defence force, the prison service, other law enforcement personnel and medical personnel, the Committee remains concerned about the inadequate level of training on the provisions of the Convention of State officials and other relevant individuals. That is particularly the case for members of the national police force, members of the judiciary, prison staff and doctors dealing with cases of torture and ill-treatment (arts. 2, 10 and 16).

**45. The State party should ensure that specialized training for officials of the national police force, members of the judiciary, including judges, prosecutors and lawyers, and medical and prison staff systematically includes modules on the provisions of the Convention, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), the principles of preventive detention monitoring and international human rights protection standards. Such training should involve the study of specific cases and should also focus on gender-specific violence. The State party should carry out assessments on a regular basis in order to measure the effectiveness and impact of the training on the full respect for the absolute prohibition and prevention of torture. The Committee recommends that the State party establish training programmes on non-coercive investigation and inquiry techniques and strengthen procedural safeguards to ensure that the fight against torture is effective and employs techniques that respect human dignity and the presumption of innocence, as recommended in the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (see A/71/298, paras. 101-103).**

#### **Follow-up procedure**

46. The Committee requests the State party to provide, by 7 December 2017, information on follow-up to the Committee's recommendations on the adoption of the bill on prevention and combating of torture, conditions of detention and respect for the principle of non-refoulement (see paras. 9, 17 (b) and (c) and 27 (c) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

#### **Other issues**

47. The Committee welcomes the fact that the State party has indicated its intention to ratify the Optional Protocol to the Convention against Torture. It recommends that the State party adopt all the necessary measures to accelerate the process of ratification in order to become a party as soon as possible, with a view to establishing a national preventive mechanism and ensuring it full independence and the allocation of adequate human and financial resources in order for it to effectively discharge its duties.

48. The Committee reiterates its recommendations that the State party make the declarations under articles 21 and 22 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.

49. The Committee invites the State party to issue a standing invitation to the special procedure mechanisms of the Human Rights Council and to consider ratifying the core United Nations human rights treaties to which it is not yet party.

50. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

51. The Committee requests the State party to submit its next report, which will be the third periodic report, by 7 December 2020. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its third periodic report under article 19 of the Convention.

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