

Committee against Torture

Concluding observations on the second periodic report of Namibia*

ADVANCED UNEDITED VERSION

1. The Committee against Torture considered the second periodic report of Namibia (CAT/C/NAM/2) at its 1478th and 1481th meetings, held on 18th and 21st November 2016 (see CAT/C/SR.1478 and 1481), and adopted the following concluding observations at its 1496th and 1497th meetings (CAT/C/SR.1496 and CAT/C/SR.1497) held on 1 December 2016.

A. Introduction

2. The Committee welcomes the second report of Namibia (CAT/C/NAM/2). However, the Committee regrets that the report 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 its first periodic report in 1997. The Committee takes note of the delegations 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 to have submitted its periodic report under it, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation. The Committee also 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 State party's ratification of the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 4 December 2007; 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 Rights of the Child on the involvement of children in armed conflict, on 16 April 2002, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 26 May 2000;

(b) The African Charter on the Rights and Welfare of the Child, on 23 July 2004;

(c) The Rome Statute of the International Criminal Court, on 25 June 2002;

(d) 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;

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

(e) 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;

(f) The United Nations Convention against Transnational Organized Crime, on 16 August 2002;

(g) The ILO Conventions No. 29 concerning Forced or Compulsory Labour, No. 105 concerning the Abolition of Forced Labour, No. 138 concerning Minimum Age for Admission to Employment and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on 15 November 2000; and

5. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including:

- (a) Combating of Rape Act (Act No. 8 of 2000)
- (b) Criminal Procedure Amendment Act (Act No. 24 of 2003);
- (c) Combating of Domestic Violence Act (Act No. 4 of 2003)
- (d) Education Act (Act No. 9 of 2003)
- (e) Child Care and Protection Act (Act No. 3 of 2015)

6. The Committee further welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including through:

- (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 2012 by the Special Rapporteurs on the human right to safe drinking water and sanitation, of indigenous peoples and 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 draft Bill on Prevention and Combating of Torture, the Committee remains concerned that until the draft act has been adopted, Namibian legislation does not contain a definition of torture. The Committee is further concerned that cruel, inhuman and degrading treatment is not fully covered in the draft bill such as *inter alia*, in the definition of 'victim' (article 1 and 16).

9. **The State party should expedite the adoption of the Prevention and Combating of Torture Bill, ensuring that the definitive adopted version of the law includes a definition of torture in accordance with 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 highly relies on standards established by case-law and which do not encompass all fundamental legal

safeguards (particularly as regards the right of the person deprived of liberty to be informed of his/her rights in a language he/she understands, to promptly contact a family member or any other person of his/her choice, to have prompt access to a medical examination by an independent doctor and to be brought before a court within a maximum period of 24 hours). Furthermore, the Committee is concerned at reports that numerous persons are held in custody beyond the 48-hour period or do not effectively benefit from the assistance of a lawyer from the outset of detention (article 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. Such rights include:

(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 and,

(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 provided by the delegation on budgetary restraints, the Committee remains concerned at the lack of information regarding the implementation of the Ombudsman's recommendations, most of which do not require state expenditures. The Committee is also concerned at the reported limited mandate of the Ombudsman, in particular concerning its capacity to carry out sufficient, regular and unannounced visits to places of deprivation of liberty and to recruit its own personnel (article 2).

13. The State party should amend the Ombudsman Act of 1990 in order to enhance its mandate and give it greater independence, in particular as regards conducting regular unannounced visits to places of deprivation of liberty. The State party should also ensure that the Ombudsman has adequate financial resources to recruit its own staff and effectively discharge its functions, in accordance with the Paris principles, and that the recommendations emerging from the Ombudsman office are effectively implemented (art 2).

Pre-trial detention

14. While welcoming the efforts made by the State party to reduce long pre-trial detention periods, inter alia through the setting up of two special courts in the district of Windhoek at magistrate court level and the magistrate's project through which a total of 52 aspirant magistrates and prosecutors were trained between 2008 and 2012, the Committee remains concerned at reports of the excessively slow functioning of the judiciary and that pre-trial detention remains unacceptably lengthy, which is harmful for the detainees. The

Committee is concerned at information that juvenile offenders are often held together with adults in pre-trial detention.

15. **The State party should expedite the modernization and the reform of the justice system and take measures to reduce the duration of pre-trial detention by considering recruiting additional judges and by 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 pre-trial detention.**

Conditions of detention

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

17. **The State party should strengthen its efforts to improve prison conditions and ensure that they are in conformity with the standard minimum rules for treatment of prisoners (the Mandela Rules), by**

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

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 (IID) to deal with complaints against members of the Namibian Police force, the Committee is concerned at its lack of independence. The Committee is further 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 police forces. The Committee remains concerned at the lack of investigation following the death of William Cloete while being under police custody on the 1st of April 2007 (article 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, with 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.

The Caprivi High Treason Trials

20. While the Committee notes that free legal aid was provided to the accused in the Caprivi High Treason Trials, the Committee is concerned at reports of denial of other fundamental legal safeguards and severe torture of detainees during these trials. The Committee is also concerned at the lack of investigation on whether evidence used in these trials was obtained under torture. Furthermore, the Committee is concerned at the long pre-trial detention periods, in some cases amounting to more than 15 years, and at certain 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 (articles 2, 6 and 15).

21. **The Committee urges the State party to ensure the expeditious conduct of the Caprivi High Treason Trials, guaranteeing that all detainees receive a fair and speedy trial and making sure that evidence obtained under torture are dismissed. The State Party should immediately take effective measures to ensure that all allegations of denial of fundamental legal safeguards as well as acts of torture and death in detention are effectively and impartially investigated.**

Impunity for acts of torture

22. While taking note of the State party's policy of national reconciliation, which was adopted after independence and enshrined in the Preamble of the Namibian 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 investigations and prosecutions of 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 (article 2).

23. **The Committee reminds the State party that the absolute prohibition of torture is a recognized jus cogens norm and 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 the prosecution are in contradiction with the object and purpose of the Convention and the jurisprudence of the Committee. 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, prosecuted and punished.**

Universal jurisdiction

24. While noting that the draft Prevention and Combating of Torture Bill provides for universal jurisdiction for the crime of torture, the Committee is concerned that, according to its article 8(2), the prosecution of a public official for torture committed outside Namibian territory is subject to the written authority of the Prosecutor General (article 5).

25. **Before adopting the Prevention and Combating of Torture Bill, 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. While noting that a) the draft bill on the Prevention and Combating of Torture provides for the prohibition of refoulement in conformity with the Convention, and b) the delegation's assurances that no one has been expelled to a country where he or she risks being subjected to torture, the Committee remains concerned that Section 24 (1), subject to the provisions of section 26 of the Refugee Recognition and Control Act No. 41 of 1999, provides for the possibility to expel recognized refugees and protected persons if this is in the interest of, *inter alia*, national security. The Committee is concerned that the State party has still not ratified the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa nor acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. While also 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, including information on the number and origins of those refugees who have received removal orders (exit notices). The Committee is further concerned that the Immigration Control Act of 1993 excludes a person convicted of sodomy from entering into Namibia (article 3).

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

(a) **Repeal Section 24 (1) in the Refugee Recognition and Control Act No. 41 of 1999 in order to respect its obligation 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 may have been issued to asylum-seekers from eastern DRC and that those asylum-seekers are allowed to remain in Namibia until the situation in DRC is conducive for repatriation on a voluntary basis;**

(d) **Ensure that individuals at risk of persecution due to their sexual orientation or gender identities are not subject to refoulement and have equal access to asylum without discrimination;**

(e) **Repeal the relevant provisions in the Immigration Control Act of 1993 which excludes a person convicted of sodomy from entering into Namibia.**

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

28. While taking note of the State party's efforts to raise awareness on violence against women and children, the Committee shares the concerns expressed by the Human Rights Committee (CCPR/C/NAM/CO/2 para 23) over the high rate of a) murder of women by their intimate partners and b) children victims of sexual violence, including rape. Furthermore, the Committee is concerned at the lack of response from the State on the allegations of rape of San women. The Committee is also concerned at the low rate of prosecutions, the lack of an available protection mechanism for immediate protection orders and at information that cases of rape are being decided by customary courts that do not impose criminal liability and may not provide full compensation to victims.

29. The State party should strengthen its efforts in raising awareness on violence against women and children. It should also educate children on violence against women and children through training teachers and develop trainings, curriculums and textbooks content, using new educational technology. The State party should ensure that prompt, impartial and effective investigations are conducted into allegations of violence, including rapes against women (such as San women) and children and that perpetrators are prosecuted and punished. The State party should provide specialized sensitizing training on sexual violence to the police and law-enforcement forces. The State party should also take effective measure to put in place special programs and separate sanctions when children are the victims, taking into consideration their possible stigmatization, their special need for confidence building measures and their lack of access to justice in accordance with the principle of the best interest of the child. The State party should strongly discourage the settlement of sexual violence cases outside of 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 people (LGBTI)

30. The Committee is concerned at reports that LGBTI people 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 of LGBTI people, including rape and murder. The Committee is further concerned by reports of abuse by law-enforcement personnel against gay men 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 LGBTI people from threats and any form of violence, in particular in places of detention through inter alia separating transgender women from male detainees. The State party should also ensure that violence against LGBTI people is promptly, impartially and thoroughly investigated, prosecuted and punished. The State party should also consider decriminalizing sexual acts between consenting adult men.

Harmful traditional practices against children

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 harmful traditional practices against women and girls, in particular the ritual of Olufuko, which involves child marriages and sexual initiation rites, and the lack of investigations, prosecutions and criminal sanctions of perpetrators.

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

Forced sterilization of people with HIV

34. While taking note of the directive issued by the Ministry of Health and Social Services on the provisions of "Family Planning Methods and Sterilization" following the Supreme court of Namibia's decision in the case of the Government of Namibia v. LM and Others, which declared the forced sterilization of people with HIV to be unconstitutional,

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 its constitution and to prevent and criminalize forced sterilization of people with HIV.

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

Corporal punishment on children

36. While welcoming the adoption of the Child Care and Protection Act No. 3 of 2015, which complements the Education Act as amended in 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 and that any allegation of corporal punishment is investigated, prosecuted and that the responsible for such acts are punished if found guilty. The State party should also conduct awareness raising campaigns about the harmful effects of corporal punishment on children informing 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, prosecuted or punished.

39. The State party should take all effective legislative, administrative, judicial or other measures to prevent that persons selling sexual services are being subjected to torture and ill-treatment and prosecute investigate and punish the perpetrators of said acts if found guilty. , The State party should also, as a matter of urgency, investigate any reports of murders of persons selling sexual services and prosecute and punish any perpetrators found guilty of such crimes.

Human trafficking

40. The Committee notes with concern that while the State party has ratified the Protocol, supplementing the United Nations Convention against Transnational Organized Crime, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, n, specific anti-trafficking legislation is still missing. 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 prosecution of offenders in line with international standards and investigate any person 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, human trafficking as well as on means to redress including compensation and rehabilitation provided to victims.**

Training

44. While taking note of the information provided by the State party on training provided to the Namibian police, the national defence force, the prisons service and other law enforcement personnel as well as medical personnel in constitutional and human rights matters, the Committee remains concerned about the inadequate training of State officials and other relevant actors on the provisions of the Convention. This is particularly the case with the Namibian National Police, 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 Namibian Police, 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), , on 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 also 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 establishes training programs on non-coercive investigation and inquiry techniques and strengthens the procedural safeguards to make effective the fight against torture with techniques respectful of 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 (A / 71/298).**

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 Prevention and Combating of Torture Act, on conditions of detention and on the 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, with in the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

47. The Committee welcomes that the State party has stated its intention to ratify the Optional Protocol to the Convention against Torture and 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 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 procedures mechanisms of the human rights council and consider ratifying the core United Nations human rights treaties.

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 State party is invited 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.
