



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

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention
pursuant to the optional reporting procedure**

Second periodic reports of States parties due in 1999

Namibia^{*}, ^{}**

[Date received: 27 October 2015]

* The Committee considered the initial report of Namibia (CAT/C/28/Add.2) at its 293rd and 294th meetings (see CAT/C/SR.293 and 294/Add.1), held on 6 May 1997. For the conclusions reached and the recommendations made by the Committee following its consideration of the initial report, see A/52/44.

** The present document is being issued without formal editing.



Foreword

1. Namibia is a secular and democratic state based on the rule of law, constitutional supremacy, and respect for human rights and justice for all. Like modern democracies, and owing to its recent brutal colonial and apartheid history, Namibia condemns all acts of torture and other cruel and inhuman treatment. It is against this background that the country signed and ratified the United Nations Convention against Torture and Other Cruel and Inhuman Treatment and has supported several United Nations Resolutions condemning acts of torture and other human rights violations.

2. Namibia is committed to the protection and promotion of human rights, including combating acts of torture. The Government tasked the Law Reform and Development Commission (LRDC) to undertake research with a view to facilitate the enactment of a law which will criminalize torture as required by the Convention and to give full effect to the prohibition of acts of torture under article 8 of the Constitution. There are constitutional provisions and several pieces of legislation that are aimed at dealing with alleged cases of torture and other cruel and inhuman treatment. Furthermore, the highest courts of the Land have passed judgments against acts of torture.

3. Our country often co-operate with stake holders on mechanisms that are aimed at detecting and preventing acts of torture and other cruel, inhuman and degrading treatment. The government with the help of the Legal Assistance Centre, a public law interest group developed a manual for human rights for the police force. Namibia will continue to implement and comply with all the provisions of international human rights instruments which she signed and ratified including the Convention against Torture. Our Government therefore commends the Committee against Torture for its unrelenting fight against acts of torture and other impunities.

Dr. Albert Kawana, MP
Minister of Justice

Introduction

4. Namibia acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 28 November 1994 and in 1995 submitted her first Report to the Committee against Torture.

Reporting methodology

5. In order for Namibia to meet and respect her international obligations, the Government established an Inter-Ministerial Committee on Human Rights and International Humanitarian Law (IMC), which is coordinated by the Ministry of Justice. Namibia is therefore pleased to present her 2nd Periodic report to the Committee. The report has two parts: the first part contains responses to the concluding observations by the Committee against Torture taking into account the list of issues contained in communication (CAT/C/NAM/Q/2) which the Committee wanted Namibia to consider prior to the submission of the second periodic report. The second part contains general information on the implementation of the Convention against Torture in relation to the relevant articles of the Convention.

Abbreviations

ARV:	Anti-Retroviral Virus
CAT:	Convention Against Torture
HIV/AIDS:	Human Immune Virus/ Acquired Immuno Deficiency Syndrome
GBH:	Grievous Bodily Harm
GBV:	Gender Based Violence
IID:	Internal Investigation Directorate
IMC:	Inter-Ministerial Committee on Human Rights and International Humanitarian Law
ICRC:	International Committee of the Red Cross
KAP:	Knowledge, Attitude and Practice
LAC:	Legal Assistance Centre
LRDC:	Law Reform and Development Commission
NANGOF:	Namibian Non-Governmental Organisation Forum
NCS:	Namibia Correctional Service
NID:	National Institute of Democracy
OAU:	Organisation of African Unity
POCA:	Prevention of Organised Crime Act
SADC:	Southern African Development Community
SWAPO:	South West Africa Peoples Organisation
UNHCR:	United Nations Higher Commissioner for Refugees
UNITA:	National Union for the Total Independence of Angola (UNITA)
WFP:	World Food Programme
WCPUs:	Women and Child and Protection Units

Part I

Responses to the concluding observations, suggestions and recommendations in relation to Namibia's first report and the list of issues (CAT/C/NAM/Q/2) prior to the submission of the second periodic report

Recommendation 241 and 242 and list of issues 1 and 2: Enacting a law defining the crime of torture

6. The challenge that Namibia faces is that the crime of torture is not specifically recognized as a statutory offence. Offences involving acts of torture are currently punished as Assault with intent to cause Grievous Bodily Harm (GBH). The State party recognizes that treating suspected cases of torture as GBH fails to appreciate the seriousness of the crime of torture and thereby does not offer justice to victims of torture.

7. The Law Reform and Development Commission (LRDC) were mandated to develop mechanisms to make torture a specific crime. The Commission is currently working on implementing the recommendation in this regard. A draft Bill making torture a specific offence is currently being developed. The provisions of the Bill incorporate the definition of torture as contained in Article 1 of the Convention.

List of issues, paragraph 3

With reference to the information provided by the State party, it is not clear whether the Convention is directly applicable in the State party or whether it has first to be incorporated by way of enactment of a domestic law? Please clarify the status of the Convention in the domestic legal order of the State party and indicate if its provisions can be invoked directly before national courts. If so, please provide examples of cases of direct application of the Convention by the Courts.

8. By virtue of Article 144 of the Namibian Constitution, the Convention is part of the Namibian domestic laws. Namibia follows a monist approach to the reception of rules of public international law and international agreements in terms of Article 144 of the Namibian Constitution. The effect of Article 144 is that the rights and freedoms provided in the CAT are enforceable within Namibia by the judiciary and quasi-judicial bodies.

9. Article 5 read with Article 25 (2) of the Namibian Constitution, gives a right to aggrieved persons who claim that their fundamental rights or freedoms guaranteed by the Namibian Constitution have been infringed, threatened or violated to approach a competent court for a remedy. In addition, the same Article, (Article 25(4)) empowers the courts to deal with cases of human rights violations, and to award monetary compensation to the victim.

Recommendation 244 and list of issues 4: The nature and functions of the Office of the Ombudsman

Article 2 of the Convention

10. The Office of the Ombudsman is established under article 89 of the Namibian Constitution. Article 89 (2) states that: the Ombudsman shall be independent and subject only to this Constitution and the law. One further provision within the constitutional

framework which relates directly to the institution's independence is Article 89(3), which reads as follows:

No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman.

11. Article 91 of the Constitution outlines all the functions of the Office of the Ombudsman. The Constitution provides that the functions of the Ombudsman shall be defined and prescribed by an Act of Parliament.

12. The Ombudsman reported that the budget allocated for the promotion of human rights was increased from N\$ 400 000 (2004) (US\$ 47 058 00) to N\$ 1 000 000 (N\$ 117 647 00) for the year 2011-12.

13. The Office of the Ombudsman established two more offices, one in the South of the country, at Keetmanshoop and another office in the North, at Oshakati, to make it more accessible to the public. Another regional office in the western part of the country was opened in December 2012, at Swakopmund.

14. In the case of *Mcnab and Others v. Minister of Home Affairs*¹ the court held that the holding of plaintiffs in small, overcrowded and poorly-ventilated, filthy, cockroached and lice infested cell amounted to inhuman and degrading treatment and in violation of arrested person's fundamental rights.

Recommendation 247: Allegations of ill-treatment and the alleged disappearance of former members of the South West Africa People's Organization

15. After independence Namibia adopted a policy of National Reconciliation. The policy was embraced by all political parties and the general public.

16. In terms of the UN Resolution 435 general amnesty was granted to all the returnees including the SWAPO leadership to participate in the process leading to the independence of Namibia. To this effect an amnesty proclamation was promulgated by the then South African appointed Administrator General.

List of issues, paragraph 5

Please provide updated information on the existing legal safeguards guaranteeing the rights of persons deprived of their liberty from the outset of their detention, including the rights to be informed of their rights, to have access to an independent lawyer and an independent doctor, if possible of their choice as well as the right to notify a person of their choice.

17. The Superior Courts of the country persuaded by constitutional provisions have handed down judgments affirming the rights of persons deprived of their liberty. In addition, to constitutional provisions affirming the aforesaid rights, the Criminal Procedure Act, Act 51 of 1977 stipulates procedures relating to arrest and seizure.

18. In *S v. Kau and others*,² the defendants were convicted in a magistrate's court of illegally hunting a giraffe. The magistrate did not tell Mr. Kau and the others that they had

¹ See attached case.

² *S v. Kau* 1995 NR 1 (SC).

the right to be represented by a lawyer of their choice. The Supreme Court held that this meant that they did not receive a fair trial.

19. The Supreme Court held that every person has the right guaranteed by Article 12 (1) (e) of the Constitution to be represented by a lawyer of their choice. A person who appears in court should therefore be informed of this right. The only exception to this rule is when it appears that the person already knows that he or she has this right. For example, a lawyer appearing in court would know of this right. For this reason and other irregularities during the trial, the Supreme Court canceled the conviction and sentence of Mr. Kau and the other persons.

20. Article 7 of the Namibian Constitution states that no-one shall be deprived of personal liberty except according to the law. This provision should be read in conjunction with Article 11 of the same Constitution which prohibits arbitrary arrest and detention and enshrines the writ of habeas corpus in that all arrested or detained persons must be brought before a magistrate or judicial officer within forty-eight hours of their arrest or detention where possible, failing which a person must be released. In addition, such arrested persons must be informed promptly in a language which they understand of the grounds for the arrest.³

21. The writ of habeas corpus, enshrined in Article 11(3), was considered by the High Court of Namibia in *S. v. Mbahapa*.⁴ The Court held that the interpretation of Article 11 (3) was straightforward and that an arrested person must be brought before a magistrate within 48 hours of his/her arrest or soon thereafter, failing which, the accused must be released. Article 12 1(d) stipulates that all persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.

22. Article 12 1(e) of the Namibian Constitution provides that all persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.

23. Article 12 (2) of the Namibian Constitution stipulates that no persons shall be liable to be tried, convicted or punished again for any criminal offence for which they have already been convicted or acquitted according to law. The Criminal Procedure Act (No. 51 of 1977 as amended) is the principal piece of legislation which governs criminal process and procedure in the criminal justice system in Namibia. It details the legal procedure for the whole system of criminal procedure, including search and seizure, arrest, the filing of charges, bail, the plea, the testimony of witnesses and the law of evidence, the verdict and sentence, as well as appeals.

24. Furthermore, in terms of section 17 the Criminal Procedure Act, No. 51 of 1977, any accused has a right to be represented by a legal practitioner of his or her choice before the commencement of and during his/her trial in any criminal proceedings.

25. The courts have gone further to hold that an accused is not only entitled to a legal representative of his/her own choice but that they are entitled to be informed of their right to apply to the Directorate of Legal Aid for a lawyer paid for by the government. In the case of *S v. Malumo*⁵ the court held that: "Even though the entitlement to legal aid is not a fundamental right in terms of the provisions of the Namibian Constitution, how else would

³ Ibid, p. 41.

⁴ *S v. Mbahapa* 1991 (4) SA 668 (Nm).

⁵ *S v. Malumo and Others* 2010 (1) NR 35 (HC).

an unrepresented lay person be in a position to exercise his right to legal representation if this entitlement is (perhaps inadvertently) withheld from him/her?”

26. In *S.v. Gadu*,⁶ Manyarara AJ suggested a simple format to inform an accused person of his/her right to legal representation:

- (a) That he has a right to be defended by a lawyer;
- (b) That he has the right either to hire and pay a lawyer of his choice or, or alternatively apply to the legal aid officer for a lawyer to be provided by the State;
- (c) That if he chooses to apply for a legal aid lawyer, the clerk of the court will assist him in completing the necessary forms; and
- (d) That the legal aid office will consider his financial circumstances and, based on its findings, it will decide and inform him whether he will be required to make any contribution towards the cost of the legal aid lawyer to be provided to represent him. In this instance, as in the other matters, the failure by the magistrate to inform the accused of his entitlement to legal aid is fatal”.

27. The right of the accused to a fair trial was raised in *S v. De Bruyn*, specifically on the issue of entrapment, that is, that the deliberate enticement of a person not otherwise predisposed to committing an offence by an official is intrinsically unfair.⁷ The High Court was of the view that ‘any reasonable, fair-minded person would immediately recognize the intrinsic unfairness involved in deliberate enticement. Such conduct deeply offended the Court’s sense of fair play and it was prepared to assume for the purposes of the case, but without deciding the question, that the conduct was so unfair that evidence thus procured should be excluded on the ground that to admit it would prejudice the right of the accused to a fair trial.’⁸

List of issues, paragraph 6

Please elaborate on the legal safeguards protecting the rights of persons in psychiatric institutions, especially with reference to involuntary treatment. Please also inform the Committee about the living conditions of this group of patients in psychiatric institutions and specify what mechanisms exist to prevent and punish acts of torture and ill treatment in such institutions. Please provide information on the number of complaints related to torture and ill-treatment reported.

28. There is currently only one mental hospital in Namibia. The assessment of the current situation with regard to specialized mental hospitals country wide has already started and the (Ministry of Health and Social Services (MoHSS) envisages having fully functional specialized mental hospitals in Windhoek, Oshakati and Rundu by 2018 and another one in Keetmanshoop by 2023.

29. Article 8 (2) (b)⁹ of the Constitution which protects human dignity may be read in conjunction with the right to equality and non-discrimination enshrined in Article 10 of the

⁶ *S v. Gadu* 2004 (NCLP 48 at 56.

⁷ *S v. De Bruyn* 1992 (2) SACR 574 (Nm).

⁸ Naldi, G. (1995) *Constitutional Rights in Namibia*. pp. 61-63.

⁹ Article 8 of the Constitution of Namibia states that: (1) The dignity of all persons shall be inviolable. (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment.

Namibian Constitution since discrimination also violates human dignity.¹⁰ All legal safeguards protecting the rights of persons in psychiatric institutions are contained in the Mental Health Act (Act. No. 18) of 1973, as amended, as well as the Criminal Procedure Act (Act. No. 51) of 1977.

30. There are further safeguards for persons detained under a reception order. In terms of section 20(1) of the Mental Health Act No. 18 of 1973, a person detained under a reception order may directly or through a curator ad litem apply to court for an enquiry to be conducted into the reasons for his/her detention. Chapter 8 of the Mental Health Act provides for the creation of Hospital Boards. These Boards oversee the wellbeing of patients in mental institutions. In terms of section 49 of the Mental Health Act, the Hospital Board is obliged to visit an institution in respect of which it has been appointed at least once in two months. The Board is obliged to investigate any reasonable complaint or grievance made to it by a patient. The Board is obliged to report to the Minister of Health and Social Services about its visits to these institutions.

31. The Board also has power to conditionally or unconditionally discharge a patient, who is not a President's patient and who is not a prisoner who is mentally ill, detained at an institution whether or not such a patient has recovered from his/her mental illness.

32. Section 65 of the Mental Health Act provides further protection for patients detained at mental institutions. In terms of this section, no male person may be employed to take personal custody of female patients. Where the female patients are assisted by a male nurse, this must be done under the supervision of a female nurse.

33. Section 69 of the Act prohibits the use of mechanical means of physically restraining a patient unless such restraint is necessary for purposes of surgical or medical treatment or to prevent the patient from injuring him/herself or others.

34. Section 63 of the Mental Health Act prohibits acts of torture and ill treatment in mental institutions. It stipulates that any person employed in an institution or other place at which a patient is being detained or any person having care or charge of a patient, who ill-treats or willfully neglects the patient, shall be guilty of an offence.

35. Section 63(2) provides penalties under the Act, it states that any person who contravenes any provision of sections 61 to 66 inclusive, shall on conviction be liable to a fine not exceeding N\$ 8 000 or to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

36. In terms of section 77 (1) of the Criminal Procedure Act "if a court has reason to believe that an accused is suffering from a mental illness, or in terms of section 78(2) if during criminal proceedings it is alleged that the accused is suffering from a mental illness, the court shall direct that an enquiry be conducted into the mental state of the accused.

37. In terms of section 77(6) and 78(6) an accused will only be declared a State President's patient and detained in a mental institution after a psychiatric report confirming that he /she is mentally ill and cannot understand the proceedings in order to conduct a proper defence or was mentally ill at the time of the commission of the offence and did not appreciate the wrongfulness of his/her actions.

38. Both sections 77(3) and 78(4) give an accused the right to challenge the report on their mental state, which is a further safeguard. The Criminal Procedure Act at section 79(2) provides a further safeguard for accused persons detained pending psychiatric

¹⁰ Naldi, *ibid* at p. 44.

examination. Such accused persons may not be committed for a period in excess of 30 days and that period can only be extended by the court.

39. In the case of *Gawanas v. Government of the Republic of Namibia*,¹¹ the appellant issued summons in the High Court in terms of which she claimed damages from the respondent in an amount of N\$741 400 (approximately U\$71185.52). The appellant alleged that she was wrongfully and unlawfully detained in the Mental Health Centre, Windhoek Central Hospital for the period 13 January 2003 till 15 December 2003. The claim was principally based on delictual liability and, in the alternative, on the infringement of her constitutional rights to personal liberty (Art. 7 of the Constitution); her dignity (Art. 8 of the Constitution); to be free from arbitrary detention (Art. 11 of the Constitution) and/or that she was denied administrative justice (Art. 18 of the Constitution).

40. Treatment without consent is possible when there is an imminent danger or harm to the patient or others, including the risk of suicide, and it is generally impossible to receive informed consent due to the person's condition and inability to communicate or make an informed decision at the given time, rather than because of his/her disability.

41. The Mental Health Act provides for legal detention of mentally ill people in hospital for treatment. Chapter 3 of Mental Health Act deals with reception of mentally ill patients. The mentally ill persons who are admitted involuntarily live together with other persons who are admitted involuntarily and those admitted voluntarily.

42. In order to prevent the occurrence of all forms of violence and abuse, the Mental Health Institution is monitored by a hospital board. Section 47 of the Mental Health Act provides for the establishment and constitution of hospital boards. During visits of the board to an institution patients are afforded opportunity of making in person any representations they may wish to make to the board. The board is obliged to investigate any reasonable complaint or grievance made to it by patient (Section 49).

43. The state party wishes to inform the committee that there have not been cases of torture against patients reported at the time of compiling this report.

List of issues, paragraph 7

Allegations of Caprivi Trialists being held incommunicado detention and subjected to torture and other cruel, inhuman or degrading treatment especially during the pretrial period

44. All alleged Caprivi trial awaiting prisoners are afforded the necessary facilities and space to mount their legal defences as per the provisions of Article 12 of the Namibian constitution. The said accused trial awaiting prisoners have not been held incommunicado as alleged by the Committee against Torture. All the accused persons are represented by the attorneys of their own choice and most of them are beneficiaries of the state funded legal aid scheme. All Caprivi trial awaiting prisoners are held at the Windhoek Central Prison.

45. During police investigations after the failed secessionists attempt in the Caprivi region, allegations of torture surfaced. It has been alleged that the accused persons were assaulted and forced by members of the Namibian Police Force and Namibian Defence Force to make confessions. Following allegations of torture in the Caprivi High Treason case, the Inspector General of the Namibian Police issued policy directives to strengthen the understanding and need to comply with both Namibian and international legal instruments on human rights by members of the force.

¹¹ *Gawanas v. Government of the Republic of Namibia* (SA 27/2009) [2012] NASC 1 (3 April 2012).

46. Chapter 3 of the Namibian Constitution which contains fundamental rights and freedoms, prohibit any person from being subjected to torture, cruel or degrading treatment or punishment. The State party acknowledges that a few incidents of alleged excessive use of force by some members of the Force during the arrest of individual accused persons in the said case were registered with the relevant authorities.

Alleged State involvement in the deaths of William Cloete, Lazarus Kandara and Linus Muhimba in police custody

47. On the 1st of April 2007, the late William Cloete was detained in a holding facility (shipping container). At 06h15 the same day, police officers on duty visited the facility where they found the deceased lying on the floor on the corner of the facility. Mr. Cloete was then rushed to the clinic in Rosh Pinah, a small settlement in southern Namibia.

48. An inquest, Rosh Pinah Inquest No. 02/2007 was registered and heard at Luderitz Magistrate Court. As a result, a charge of culpable homicide as per Rosh Pinah CR 06/09/2009 was registered and three police officers suspected to have been involved were arraigned before the Luderitz Magistrate's court.

49. Mr. Lazarus Kandara committed suicide while being escorted by the police to a holding cell. An inquest, No. 33/2005, Death Register No. PM 476/2005 was registered in terms of the Inquest Act No. 6 of 1993. An inquest was held in the Magistrate's court of the district of Windhoek to determine evidence on the cause of his death. It was ruled that the cause of death was a bullet wound in the chest which ruptured the heart. The court further determined that the death of Mr. Kandara was not brought about by any act or omission prima facie involving or amounting to an offence on the part of any other person.

50. The said Mr. Linus Muhimba died after a failed escape bid from the Okakarara Police Holding cells. He sustained head injuries during the said attempt and died of his wounds. The Namibian Police Force had no hand in his death.

51. The Courts had addressed the matter of torture, in the leading case of *Namundjebo and Others v. Commanding Officer, Windhoek Prisons and Others*¹² on cruel, inhuman or degrading treatment or punishment. In this case prison warders put Thomas Namundjebo and four other awaiting trial prisoners in chains (or "leg irons"). The chains consisted of two metal rings with a fastener that is usually welded closed or sealed in such a way that the prisoner cannot remove the ring. A metal chain connects the two rings. A warder put a ring on each leg, just above the ankle. The chains restrict the person's movements and are uncomfortable.

52. The prisoners were chained because one of them was allegedly planning to escape from prison and the others had previously escaped from prison. They remained in chains for approximately six months. The prison authority removed the chains after Namundjebo and others applied to the High Court. In their application to the High Court they said that being chained was contrary to Article 8 of the Namibian Constitution. The High Court ruled in favour of the Commanding Officer of the Windhoek Prisons. The applicants then appealed to the Supreme Court.

53. The Supreme Court noted that imprisonment necessarily affected some of the prisoner's rights, including the right to dignity. To chain a person "was a humiliating experience which reduces the person placed in irons to the level of a hobbled animal whose mobility is limited" The court therefore ruled that it was a degrading treatment to put chains

¹² *Namundjebo and Others v. Commanding Officer, Windhoek Prisons and Others* 2000 (6) BCLR671 CNMS).

on prisoners and that this was contrary to Article 8 (2)(a) and (b) of the Namibian Constitution.

List of issues, paragraph 8

According to information provided by the State party in its combined eighth to twelfth reports to the Committee on the Elimination of Racial Discrimination (CERD/C/NAM/12, para. 219), detention of refugees and asylum-seekers, is not subject to independent monitoring. Please explain what measures have been taken by the state party to control and monitor the detention of refugees and asylum seekers, and provide information on the number of complaints concerning torture or ill-treatment received from asylum seekers, refugees or illegal migrants held in detention. Please further elaborate on the information before the Committee that illegal immigrants are kept in the same cells as convicted prisoners.

54. Refugees at the Osire refugee camp have unfettered access to police, health and other services at the settlement. They can air their complaints through the above avenues. Refugees and asylum seekers are also allowed to air their grievances to the offices of the United Nations Higher Commissioner for Refugees (UNHCR) in Namibia. Moreover, most refugees and asylum seekers have access to the internet, cell phones and other forms of social media to air their grievances. The medical practitioners/personnel at the settlement can support their claims of torture/ill-treatment as proof when they report these types of incidences.

55. On the issue of detention facilities for asylum seekers/illegal immigrants, such people are kept in the police holding cells while they are waiting to appear before courts of law for trial. In cases in which they committed minor offences e.g. overstaying in the country and or entering the country without documents, they are in most cases given forty eight (48) hours to leave the country. Once they serve their sentences or pay fines, the Immigration Tribunal authorizes their deportation as prohibited immigrants.

56. Refugees and/or asylum seekers who commit Schedule I offences¹³ under the Criminal Procedure Act, Act No. 51 of 1977 are also kept in the police holding cells while awaiting their trials to be finalized. The state party wishes to affirm that it does not keep trial awaiting prisoners together with convicted prisoners in once cell.

¹³ According to Namibian Law, Schedule 1 offences are very serious in nature. These include murder, rape, and treason among others.

List of issues, paragraph 9

Please provide clarification about the establishment of a committee on sexual and gender based violence in the State Party. Please also indicate the measures taken by the State party to prevent, investigate, prosecute and punish acts of violence against women and children, to inform the victims of their rights and to ensure that police station and shelters for victims of violence exist throughout the country, including in rural areas. In this connection, please specify the number of existing shelters and their capacity and provide updated information on the Women and Child Protection Units established by the Namibian Police. Please indicate how cooperation with civil society organizations on combating violence is carried out. In this regard, please explain what has been the impact of the “16 Days of Activism against Gender Violence” campaign organized by the Ombudsman Human Rights Advisory Committee in 2006, and indicate whether similar activities or any other awareness-raising campaigns have been initiated by the State party.

57. The State party acknowledges that violence against women and children is a serious concern in the country. Reports indicate that half of the victims suffer violence at the hands of persons they know. However, Government and stakeholders have made tremendous efforts to address it.

58. The Ministry of Gender Equality and Child Welfare in 2005 approached Cabinet for the establishment of a High-Level Strategic Inter-Ministerial Committee to address issues related to gender based violence and violence in general in the country. The Committee was established in an effort to address gender based violence and violence in general which was escalating at the time.

59. This Committee consists of various stakeholders that monitor and coordinate efforts to reduce the level of gender based violence in the country. The country has 19 registered shelters and 5 unregistered shelters. As of 2013, a total of 915 children were currently housed at these shelters. There are 15 WCPU units under the Namibian Police across the country.

60. The civil society is part of the National Advisory Committee on GBV. The Legal Assistance Centre, an independent and public law interest group has been on the forefront in the fight against the scourge of Gender Based violence in Namibia. The centre has a Gender Research Unit, which among other things deals with HIV/AIDS, Human Trafficking and Gender Based violence. The LAC has also trained government officials on issues relating to children's rights, gender and community development.

61. The commemorations of the 16 days of activism against gender based violence are organised annually by the Government of the Republic of Namibia as is the rest of the world. This campaign is organized in collaboration with a number of stakeholders including the Office of the Ombudsman, the Ministry of Gender Equality and Child Welfare, law enforcement agencies, civil society organizations and Faith Based organizations. The main purpose of this campaign is to educate and make the general public aware of the danger of gender based violence. The positive impact of this campaign is that more people are reporting cases of GBV against women and children and more men are now involved in the campaign.

62. Other similar activities of awareness raising campaigns are done on the 10th of December which is International Human Rights Day. All stakeholders get involved in the event country wide. Apart from the above the country launched in 2007 an ongoing zero tolerance campaign against gender based violence with the theme “Report it to stop it”.

63. In the area of research, Knowledge, Attitude and Practice (KAP) study was conducted in 2007-2008 on factors and traditional practices that may perpetuate or protect

Namibians from violence and discrimination. A national qualitative assessment of human trafficking was conducted in 2009 to determine the scope and nature of human trafficking in Namibia. In addition to the studies, the Ministry of Gender Equality and Child Welfare (MGE CW) and the Ministry of Safety and Security jointly collect and analyse GBV statistics from the WCPUs. Efforts have also been made to improve the services offered by WCPU. Furthermore, Parliamentarians regularly conduct outreach programmes to make the community aware on the role of parliamentarian and how the community can influence the law making process.

64. In early, 2014, President Hifikepunye Pohamba, in a special address to the nation declared 6 March 2014 as a National Day of Prayer against Violence. This intervention came as a result of a spate of killings which has been characterized as “passion killings” because it involved killings of persons who were in intimate relationships.

List of issues, paragraph 10 and recommendations 245 and 248

With reference to the previous recommendation of the Committee (para. 245), please explain in detail steps undertaken by the State party to introduce measures to reduce the accumulation of criminal cases resulting in long and illegal pretrial detention, which violates the right of defendants to be tried within a reasonable time. Please also provide information on the measures taken to implement the Committee’s recommendation that traditional leaders in community courts in Namibia should either be effectively made to comply with the legal limits of their power to order pretrial detainment of suspects or stripped of their power to order such pretrial detention. Furthermore, please inform the Committee on progress made towards the completion of the draft community courts bill.

65. The Namibian judiciary system has introduced a number of measures aimed at reducing the accumulation of criminal cases in the courts. These measures are discussed below:

66. The Criminal Procedure Act, Act 51 of 1977 has been amended by inserting section 57A to give prosecutors authority to issue admission of guilt fines in cases where the prosecutor on reasonable grounds believes that a magistrate’s court, on convicting an accused of an offence, will not impose a sentence of imprisonment only or of a fine exceeding N\$6 000. Previously, this was only possible in cases where the prosecutor believes the sentencing court might only impose N\$300 or 3 months imprisonment. With this amendment, it is possible to dispose a number of cases without requiring persons to appear in court thereby reducing the backlog in the criminal case load.

67. The Government through the Ministry of Justice has set up two dedicated special courts to deal with the backlog of cases in the district of Windhoek at magistrate court level; one court is dedicated to deal with corruption cases while the other deals with other offenses/crimes and will roll over to other parts of Namibia in due course. The Magistrate’s Commission, a semi-autonomous branch of the Ministry of Justice is considering the possibility of operating Saturday courts specifically dealing with backlog cases.

68. The Ministry initiated a magistrate’s project on the training of magistrates to increase the numbers of magistrates and prosecutors in the country. From 2008 to 2012 a total of 52 aspirant magistrates and prosecutors were trained. The Government also entered into bilateral agreements with neighboring countries, namely Zimbabwe and Zambia to employ magistrates and prosecutors on contractual basis to help reduce the backlog of cases.

69. The Community Courts Bill was enacted into an Act of Parliament as the Community Courts Act, Act No. of 2003. The Community Courts Act does not confer any jurisdiction to traditional leaders to order any pretrial detentions.

List of issues, paragraph 11 and recommendation 249

Article 3 of the Convention

Please provide information on the Extradition Act, Act No. 11 of 1996 and any other new law, policy or measure related to extradition, and indicate how its provisions meet the requirements of the Convention. Please also provide information on the number of requests for extradition received by the State party since its initial report, as well as information on cases where the State party proceeded with extradition, return or expulsion and the reasons for such decisions. Please elaborate on cases where extradition, return or expulsion was not carried out and indicate the basis of such decisions. What remedies are in place to appeal cases of expulsion, return or extradition? Are any countries designated as a “safe country”? If so, please explain for what reasons they are considered as such.

70. The Extradition Act, Act No. 11 of 1996 provide for the extradition of persons accused or convicted of certain crimes committed within the jurisdictions of certain countries, and for incidental matters hereto.

71. The Extradition Act, Act 11 of 1996 provides for the following in compliance with the CAT.

72. Section 3 of the Act makes provision for an “extraditable offence” which must comply with the dual criminality aspect. Thus the offence has to be an offence carrying a punishment upon conviction of 12 months imprisonment or more and the offence should be an offence in both Namibia and the requesting State.

73. Namibia can only extradite a person in terms of the Extradition Act if an agreement to that effect between Namibia and such State or if such requesting State has been designated by the President of Namibia by way of proclamation in the Government Gazette.¹⁴

74. Section 15 of the Extradition Act also makes provision for an appeal procedure and allows for any person or the government of the requesting country to appeal to the High Court of Namibia within 14 days from the date of the decision not to extradite. The High Court may come to a different conclusion than the magistrate in its findings.

¹⁴ Section 5 of the Extradition Act places a restriction on the return of persons to the requesting State if any of the grounds set out there in exists, especially the following provision: Section 5 (1) - “Notwithstanding section 2 or the terms of any extradition agreement which may be applicable, no person shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, if it appears to the Minister acting under such section 6(3), 10 or 16 or the Magistrate concerned acting under section 11 or 12, as the case may be – “(d) that the person will be or may be liable to a death penalty or any other type of punishment that is not applied in Namibia if he or she is so returned, unless the requesting country guarantees that the death penalty or such other type of punishment will not be imposed or; if imposed, will not be carried out; (h) that the granting of the request for such return would be in conflict with Namibia’s obligations in terms of any international convention, agreement, or treaty;” Sections (3) and (4) of the Extradition Act further requires the rule of speciality to be observed and the sought person not to be extradited or delivered to a third party State.

75. The High Court may also order the discharge of a person detained in terms of Section 12 (5) of the Extradition Act if it is satisfied that:

76. It would be unjust to return a person by reason of the violation of any of the provisions of Part II of the Act:

- If it is a trivial offence;
- If the time lapse between the commission of the offence and the time when the person became unlawfully at large;
- If the accusations against the person sought have not been made in good faith or in the interest of justice.

77. The requests emanating from countries designated by Namibia in terms of the Extradition Act are all subject to the requirements set down by the Government of the Republic of Namibia as far as it is not in conflict with the supreme law of Namibia, being its Constitution. Thus, if a country is not regarded as a “safe” country, then the likelihood that a person would be extradited thereto is very slim.

78. During (2013) Namibia recorded five (5) requests for mutual legal assistance and made three (3) requests for mutual legal assistance to foreign states. Ten (10) requests were received and two (2) requests were made by Namibia.

List of issues, paragraph 12 and recommendation 249

Please clarify the Refugees Recognition and Control Act No. 41 of 1999 and provide information on its content as regards the definition of refugees and the non-refoulement obligation contained in the Convention. What guarantees and judicial remedies are available under this law against an expulsion or refoulement decision? Please provide the Committee with a copy of this law.

79. Section 3 of the Refugees (Recognition and Control) Act (Act No. 2 of 1999),¹⁵ defines the term “refugees” as follows: For the purposes of this Act, a person shall be a refugee if persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he or she is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of the country or (b) not having a nationality and being outside the country of his or her former habitual residence, he or she is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it or (c) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, he or she is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality.

80. As stated above, it is safe to conclude that the definition of the term “refugee” in the Act reflects the language in the 1951 Convention Relating to the Status of Refugees and the 1969 O.A.U Convention governing the Specific Aspects of Refugees Problem in Africa. Based, on the provisions of the above treaties, Namibia is obliged to honour and respect the non-refoulement obligation contained in those Conventions.

81. With regard to the provisions of the Act in relation to the expulsion or non-refoulement of refugees and/or asylum seekers the said Act states as follows:

¹⁵ A copy of the said Act is attaché herewith.

82. Section 24 (1), subject to the provisions of section 26 and the following subsections of this section, the Minister may, if he or she is reasonably of the opinion that it is in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, request the Commissioner in writing to order the detention or the expulsion from Namibia of any recognized refugee or protected person. (2) Before making an order contemplated in subsection (1), the Commissioner shall refer the request of the Minister to the Committee for consideration. (3) The Committee shall consider every request referred to it by the Commissioner in terms of subsection (2) and (a) may carry out such investigation or conduct such inquiry with regard to such request as it may deem necessary; and (b) shall by written notice, served in the prescribed manner, notify the recognized refugee or protected person whose detention or expulsion is being considered that the Minister has requested his or her detention or his or her expulsion from Namibia to a country specified in that notice and (i) furnish him or her with reasons in writing for his/her intended detention or expulsion; and (ii) call upon him or her to make, subject to the provisions of subsection (4) oral or written representations with regard to his or her intended detention or expulsion to the Committee within 7 days from the date of service of the notice and (c) shall thereupon in respect of every such request make recommendations to the Commissioner.

List of issues, paragraph 13

According to information provided by the State Party (CERD/C/NAM/12, para. 217), “around forty-eight (48) refugees and asylum seekers” were arrested and detained by the immigration authorities and the police in 2006. Most of them were released after UNHCR intervention and following agreement with the Ministry of Home Affairs and Immigration. Please indicate where and for how long these refugees and asylum-seekers were detained and for what purpose. What were the conditions of their detention? Did they have access to a lawyer? What judicial remedies were available? Please indicate whether any complaints of torture or ill-treatment have been received in these cases. Please also indicate how many asylum-seekers and refugees are still in detention and provide detailed information on their conditions of detention.

83. After an investigation by the Ministry of Home Affairs in 2014, no sufficient evidence could be found that the said refugees and asylum seekers were arrested and/or detained by the immigration authorities and the police in 2006. However, should any evidence on the said allegation come to light, the state party will promptly investigate the matter and transmit the results to the Committee.

List of issues, paragraph 14

Please provide detailed information on the human rights situation and living conditions of refugees in the Osire Refugee Camp. Please also indicate how many police officers ensure security at the Osire Refugee Camp and explain what remedies are available within the camp to complain in case of torture or ill-treatment. Please also indicate whether there are medical personnel, including medical personnel assigned to identify cases of torture and ill-treatment, in refugee status in due time.

84. The State party wishes to state that Osire is not a Refugee Camp; Osire by law is a Refugee Settlement. The living conditions of Refugees and Asylum Seekers in Osire is in accordance with international standards. Refugees and asylum seekers at Osire refugee settlement are provided with basic needs such as shelter, food, clothing, primary health care, and primary education, including secondary education up to grade 12. The number of police officers protecting the settlement of Osire varies from time to time but it is enough to ensure security to its inhabitants.

85. The following facilities can be found at the Osire Refugees Settlement:

- (a) A health facility at the level of a clinic to ensure that refugees and asylum-seekers including their children are provided with adequate health care services;
- (b) There are education facilities such as a Kindergarten, primary and secondary schools up to Grade 12; and a
- (c) Refugees and asylum seekers have access to a well-equipped library, youth and women centre as well as social clubs where they are busy with educational programmes and income generating activities;
- (d) Police station.

86. The Government, through the Ministry of Education and that of Health and Social Services pays the monthly salaries of some of the teachers and nurses who are based at Osire Refugee Settlement, while the United Nations High Commissioner for Refugees (UNHCR) pays the doctors and the rest of the teachers and nurses their monthly salaries. The World Food Programme (WFP) also helps with the provision of food rations as supplementary efforts to the UNHCR.

List of issues, paragraph 15

According to information provided by the State party (CERD/C/NAM/12, para. 222), refugees and asylum-seekers have the right to have access to courts and the Government of Namibia is not aware of any refugee who has been denied this right. Please explain in detail how refugees and asylum-seekers in the refugee camp may fully exercise this right in practice, in particular when they want to complain about ill-treatment or torture.

87. The refugees and asylum seekers have access to courts of law in Namibia. Refugees and asylum seekers may approach any court, to seek redress with regards to any violation of their rights. The nearest court of law accessible to refugees is located in the town of Otjiwarongo, less than fifty (50) kilometers from the settlement. The settlement at Osire has a police station and UNHCR office where refugees and asylum seekers may report any ill-treatment or any complaints. The Namibian Police Force provides free transport for refugees to attend any court sessions in which they are involved.

List of issues, paragraph 16

Please provide updated information on the implementation of the Immigration Control Act, Act No. 7 of 1993 and the Departure from Namibia Regulation Amendment Act, Act No. 4 of 1993. Please provide information on the number of:

- (a) Immigrants, asylum-seekers and refugees in Namibia;
- (b) Cases of expulsion or deportation decided by the immigration tribunals;
- (c) Appeals to the Supreme Court;
- (d) Complaints received about torture or cruel, inhuman or degrading treatment during deportations.

88. The purpose of the Act was to amend the Departure from (Namibia) Regulation Act, Act No. 34 of 1956, so as to adjust its provisions in view of the independence of Namibia. The Act is in force.

89. The Immigration Control Act (Act No. 7) of 1993 is in force. The said Act regulates and controls lawful migration (exit and entry) through the designated ports of entry. The Act is in force.

90. According to statistics the number of migrants (both legal and illegal), asylum seekers and refugees entering and exiting the country numbered about 44 592 at the time of reporting.

91. The state party wishes to inform the committee that indeed there have been cases of expulsion or deportation decided by the immigration tribunals and all have been done in accordance with the relevant statutes. At the time of reporting, a total of 1 231 illegal immigrants were arrested and deported to their respective countries.

92. Save for the case of *Government of the Republic of Namibia v. Sikunda*¹⁶ there has not been any appeals to the Supreme Court regarding the expulsion or deportation of immigrants, asylum seekers and refugees as a result of decision made by the Immigration Tribunal.

93. There were no reported cases of such nature during the reporting period.

List of issues, paragraph 17

According to information provided by the State party in its initial report to the Committee (CAT/C/28/Add.2, para. 14), the Minister of Home Affairs may set aside a decision by an immigration tribunal to authorize the expulsion of a person from Namibia. Please provide example of cases where such a decision was taken by the Minister of Home Affairs, specifying in detail the grounds for this decision.

94. During the reporting period, there were no cases in which the Minister of Home Affairs had to set aside a decision of the Immigration Tribunal to authorize the expulsion of a person from Namibia.

List of issues, paragraph 18

Please comment on the information before the Committee according to which the State party had expelled or threatened to expel refugees into the hands of “potential persecutors”. Four men Jose Domingos Sekunda, Paulo Mendes, Herculano Jornal Satchanga and Bartolomeu Sanguete) who allegedly might be expelled to Angola by the Namibian authorities and allegedly risked torture by the Angolan security forces if returned and provide updated information on their situation.

95. The case of Sikunda is well documented in the public domain in the Republic of Namibia. This followed an attempt by the Government of the Republic of Namibia to expel him and few other Angolans from the country on security grounds and or for staying in Namibia without legal documents.¹⁷ Sikunda and others are still in Namibia following the Supreme Court decision.

¹⁶ (SA5/01 , SA5/01) [2002] NASC 1 (21 February 2002).

¹⁷ For more information on the case, a copy is attached herewith.

List of issues, paragraph 19 and recommendation 249

With reference to the previous Committee's recommendation (para. 249), please explain what measures the Namibian authorities have taken to institute proper procedures in order to comply with article 3 of the Convention, i.e., to enable refugees to apply for residence in cases where substantial grounds exist for believing that they would be in danger of being subjected to torture if expelled, returned or extradited to another country. Provide information on the relating to the granting of the residence permits of the refugees.

96. Measures had been taken by the Namibian authorities to institute proper procedures in order to comply with Article 3 of the Convention Relating to the Status of Refugees. Therefore, the Ministry of Home Affairs and Immigration is in the process to locally integrate 2400 former Angolan refugees into the Namibian society.

List of issues 20

Articles 5, 6, 7, 8 and 9 of the Convention

Please explain what appropriate measures have been taken to fully ensure the universal jurisdiction of the State party over crimes of torture. Please also indicate whether the State party has entered into any treaties on mutual judicial assistance with other countries. If so, please indicate which countries are concerned and provide examples where such mutual agreement has been implemented in cases of offences of torture and ill-treatment.

97. Due to the absence of a specific legislation on torture Namibian courts lacks universal jurisdiction on the crime of torture. However, several pieces of legislation below in one way or another attempts to address the questions raised above.

98. The Namibian Government has enacted the Geneva Act, Act No. 15 of 2003 to fully ensure her universality jurisdiction over crimes torture. Section 2 (1) of the said Act stipulates that, "any person who in Namibia or elsewhere commits, or aids, abets or procures the commission by another person of, a grave breach of any of the conventions or of protocol shall be guilty of an offence, and further in subsection (3) that this is applicable to any person irrespective of nationality for punishment of life imprisonment as compelled by circumstances.

99. The International Co-operation in Criminal Matters Act, No. 9 of 2000 aims to facilitate the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of proceeds of crime between Namibia and foreign States. Schedule 1 of the Act lists foreign states in respect of which the Act applies. These include all the SADC countries the Act specifically provides for the mutual provision of evidence; the mutual execution of sentences and compensatory orders and the confiscation and transfer of proceeds of crime.

100. As mentioned earlier, Namibia has not yet enacted legislation to criminalize torture therefore jurisdiction to extradite a person accused of the crime of torture remains a challenge.

List of issues 21 and recommendation 243: Education of Law Enforcement personnel regarding torture

Article 10 of the Convention

Please elaborate on the measures taken to implement the previous recommendation of the Committee that education of members of the Police Department, the National Defence Force, the Prisons Service, other law enforcement personnel and medical officers regarding the prohibition of torture and other cruel, inhuman and degrading treatment should be fully included in their training, in accordance with article 10 of the Convention, with special emphasis on the definition of torture as contained in article 1 of the Convention and also emphasizing the criminal liability of those who commit acts of torture (para. 243). Please submit any relevant training materials.

101. The Namibian Police offers Human Rights training on the following topics:

- Bill of Rights as enshrined in the Constitution of the Republic of Namibia
- Namibian Police (Basic Training and development courses) Legal Rights and the Constitutional Study Guide
- Namibian Police Human Rights Manual

102. Furthermore, the Namibian Police provides developmental courses for capacity building to its members through different tertiary institutions including Police training Colleges.

103. In addition, the Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO) provides training on code of conduct, Human Rights and policing towards ethical policing on which the following topics are covered.

- Human Rights and Policing
- Major Human Rights Instruments
- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The African Charter on Human and Peoples' Rights
- The Convention on the Rights of the Child
- The Convention on the Elimination of All forms of Discrimination Against Women

104. The training of the Correctional Services provides for a significant number of courses which are aimed at teaching correctional officers on how to treat offenders humanely and to avoid alleged incidences of torture, cruel, inhuman and degrading treatment. The topics include:

- The mission of the Namibian Correctional Service
- The Constitution of Namibia
- The duty to act fairly
- The use of force
- Crisis intervention and conflict management
- Responding to manipulative behaviours

- Person and area searches and report writing, defusing situations, the use of weapons, firearms, batons and handcuffs

105. The Namibia Defence Force is also training and educating its members on Human Rights and Humanitarian Law. Topics on Human Rights and Humanitarian Law are included as part of subjects taught during basic military training, Non Commissioned Officers courses, officer's cadets training, basic military law training and advanced military law training. As part of the Humanitarian Law the aspect of torture receives prominence and most of the materials used are sourced from the Namibian Constitution, international instruments (UN manuals on the Law of Armed conflict) and the International Committee Red Cross.

106. In addition, the Ministry of Defence in collaboration with the International Committee of the Red Cross (ICRC) conducts human rights workshops for its members on an annual basis. Furthermore, the Ministry of Defence has entered into an agreement with local tertiary institutions to offer courses in human rights law to its members.

List of issues, paragraph 22

Please provide updated information on the administrative directives aimed at preventing torture from occurring in the police force laid down by the Namibian police, as well as on their effectiveness and impact since the State party's initial report.

107. The Internal Investigation Directorate of the Namibian Police Force was established in 1992 and it is fully operational. It deals with complaints and investigation of criminal and misconduct cases against the Police members as per the Police Act, Act No. 19 of 1990 as amended, and the code of conduct and enshrined in the Act. The most common criminal offenses that are often registered as a result of torture, cruel, inhuman or degrading treatment are Assault GBH, attempted murder and common assault.

108. All complaints are investigated thoroughly and on conclusion, a decision is made whether the member of the Namibian Police Force should be charged criminally or departmentally. In cases where criminal offenses of assault GBH, murder and attempted murder are instituted, a Suspension Hearing is conducted to suspend the member and if convicted in a criminal court for these offenses, an enquiry will be conducted to determine the member's fitness to remain in the Namibian Police Force.

109. However, the state party wishes to reiterate the fact that on a regular basis awareness campaigns are done to address the issue of torture, or cruel, inhuman or degrading treatment by police officers.

List of issues, paragraph 23

In its initial report to the Human Rights Committee (CCPR/C/NAM/2003/1, para. 130), the State party reported that the office of the Government Coordinator for Human Rights in the Documentation Centre, has started a nationwide human rights training programme for rank-and-file policemen and women. Please provide further information on this initiative in the light of article 10 of the Convention.

110. The Office of the Government Coordinator for Human Rights is now known as the Inter-Ministerial Committee on Human Rights and International Humanitarian Law, which is a Technical Committee tasked with the duty of compiling state reports and it is headed by the Permanent Secretary of the Ministry of Justice as the chairperson. The Inter-Ministerial Committee on Human Rights and International Humanitarian Law consists of government

agencies and ministries as well as Non-governmental organizations that deals with human rights and humanitarian law issues in the country.

List of issues, paragraph 24

111. There is no formal training of Judges and Prosecutors on the prosecution and punishment of perpetrators of acts of torture. However, there are mechanisms in the form of statutes as well as case precedents on the prosecution and punishment of perpetrators of acts of torture in a manner reflecting the gravity of the crime. The State party welcomes the committee's concern on the need to provide training programmes against acts of torture and will consult further with relevant stakeholders on the matter.

112. The State party does not have specific information and is not a State party to the said "Istanbul protocol". After consultations with relevant stakeholders, Namibia will consider becoming a State party to the said protocol.

113. The state party does not have specific training programs existing for personnel at detention centres or prisons to detect any signs of physical, psychological torture, and ill treatment of persons deprived of their liberty. However, there exists a mechanism that allows victims of alleged torture in such places to report such cases to the relevant authorities.

List of issues, paragraph 25 and recommendation 244

Article 11 of the Convention

Please elaborate on the measures taken by the State party to implement the previous recommendation of the Committee that independent governmental bodies consisting of persons of high moral standing should be appointed to take over the inspection of detention centers and places of imprisonment (para. 244). Please also explain the extent to which the previous recommendation of the Committee to establish an independent authority to deal with complaints against members of the Police Department has been implemented by the State party (para. 244). Please also provide information on the Prison Act No. 17 of 1998 or any other new legislation on prisons and elaborate on its content and implementation.

114. The Correctional facilities are open for inspection by the Ombudsman's office which is an independent Government institution. The Prisons Act, Act No. 17 of 1998 was repealed and replaced by the Correctional Service Act, Act No. 9 of 2012, which provides for Visiting Justices whose responsibility, amongst others, is to inspect the facilities.¹⁸

115. The Internal Investigation Directorate (IID) within the Namibian Police has now employed legal practitioners who assist with investigations and to deal with complaints against members of the police force.

¹⁸ See sections 122 and 123 of the attached new Correctional Service Act, Act No. 9 of 2012, which provides for the visiting Justices to Correctional Facilities in terms of the said Act.

List of issues, paragraph 26

According to information before the Committee, prisons conditions fell below international standards, prisons were overcrowded and inmates lacked access to hygiene products and adequate food. The prevalence of HIV/AIDS in prisons was estimated to be at least high as the national rate of 29 per cent. Please also explain the measures taken by the State party to improve the standards of living in prisons in terms of, inter alia, living space in cells, hygienic conditions, nutrition and access to medical services (including for detained persons with HIV/AIDS). Please provide information on the conditions of detention of the Namibian suspects in the Caprivi treason trial.

116. According to the National HIV Sentinel Survey of 2006 and 2008, the national prevalence rate in Namibia was 19.9% and 17.8% respectively. In addition, no HIV surveillance studies were conducted in the correctional facilities during the period 2007 to 2009.

117. Inmates held at correctional facilities have access to medical services including HIV/AIDS services. The Namibia Correctional Service (NCS) makes provision for each correctional facility to have a Health Care Services section at bigger facilities and Nursing Services at smaller facilities. Therefore, inmates are treated on the premises and in case of serious cases are referred to State health facilities. Furthermore, all HIV patients have access to ARV treatment.

118. All inmates in custody have access to hygiene products such as cleaning materials and toiletries including shaving apparatuses as provided for in the Correctional Service Regulations.

119. All inmates receive three meals a day, while those with lifestyle diseases including HIV and AIDS receive special diet as stipulated in the Correctional Service Menu.

120. There are a total of thirteen (13) gazetted correctional facilities countrywide, namely, Windhoek, Hardap, Oluno, Walvis Bay, Omaruru, Grootfontein, Swakopmund, Keetmanshoop, Luderitz, Gobabis, Elizabeth Nepembe, Divundu and Evarastus Shikongo.

121. The current total official bed capacity of the Namibian Correctional Service facilities is 4475 as illustrated by the 2010/2011 offender statistics. During the said period, the total offenders detained were 4445.

122. The following correctional facilities are currently experiencing overcrowding: Oluno Correctional Facility (79%), Omaruru Correctional Facility (64%), Grootfontein Correctional Facility (54%), Windhoek Central Correctional Facility (44%), Walvis Bay Correctional Facility (31%) and Swakopmund Correctional Facility (10%).

123. Several measures to improve the standards of living in correctional facilities are being implemented. These include the renovation of the old correctional facilities to increase accommodation and ventilation. In addition, other measures are being taken to transfer inmates to less populated correctional facilities.

124. Suspects in the Caprivi Treason trial are accommodated in the Windhoek Correctional Facility in their own section separate from those who are convicted and sentenced.

List of issues, paragraph 27

Please explain how far the Prison Act, Act No. 17 of 1998 or any other law relating to prisons has improved:

(1) The complaints procedure in prisons and indicate the number of complaints for acts of torture, cruel, inhuman or degrading treatment received from prisoners since the initial report of the State party, as well as the follow up given to them.

(2) Please specify the number of superior officers concerned. Please also elaborate on the content of the “Code of Conduct” for prison members” as well as on progress made towards its adoption, and provide updated information on the implementation of the Discipline Code.

125. The new law, the Correctional Service Act, Act No. 9 of 2012 and its regulations came into force, which repealed the Prisons Act, Act No. 17 of 1998. In terms of the Inmate Information Handbook, inmates have the right to lodge complaints with the correctional authorities or with the Namibian Police.

126. A Code of Conduct for Prison members was issued by the Office of the Commissioner-General in 2008 and revised in 2014. Upon its issue, meetings with the officers in charge and officers dealing with Complaints and Discipline were held, where the Code was discussed in detail. The officers were directed to conduct meetings with all correctional officers at their respective prisons to discuss and explain to them the contents of the code.

List of issues, paragraph 28

Please provide statistical data about the current number of persons held in pretrial detention and specify the duration of the detention and the crime concerned. Please also provide updated information on the number of complaints for torture or cruel, inhuman or degrading treatment received by persons in custody or pretrial detention and the follow-up given. Please comment on the information before the Committee that common-law criminal suspects have been held in police custody without trial for up to four years.

127. It is a challenge to provide such statistics of persons held in pretrial detention as their numbers varies from time to time. This is as a result of the following reasons:

- (a) Some might be released on bail;
- (b) Some might be released in terms of Section 174 of the Criminal Procedure Act;
- (c) Nole prosequi.

List of issues, paragraph 29

Articles 12 and 13

Please provide detailed information about the specific measures taken by the State party since its initial periodic report to fight impunity and ensure that those responsible for violations of human rights, including torture, or cruel, inhuman or degrading treatment, are brought to justice. Please also indicate, under which specific norms are perpetrators of acts of torture currently prosecuted and inform the Committee about the number of complaints of torture or cruel, inhuman or degrading treatment received against State agents, including superior officers and public authorities, the number of criminal and disciplinary proceedings which were instituted and any sanctions imposed.

128. As already mentioned, Namibia currently has no statute that explicitly criminalizes the crime of torture. Incidents of alleged torture are punished under common law offences such as assault with intent to cause grievous bodily harm (GBH) or attempted murder. In this regard there are no cases of impunity reported to the relevant authority.

129. However, in terms of Section 2 of the Geneva Convention Act, Act No. 15 of 2003, it provides that any person who in Namibia commits a grave breach any of the convention or of protocol 1 shall be guilty of an offence of torture.¹⁹

130. The Complaints and Discipline and Internal Investigation Directorate of the Namibian Police Force which deals with complaints and investigation of criminal and misconduct against the Police members was established in 1992 and it is fully operational.

List of issues, paragraph 30 and recommendations 247 and 252

Please provide information on the Criminal Procedure Act No. 25 of 2004 and indicate with reference to the previous recommendations of the Committee (para. 252 and 247), the measures taken by the State party to:

- (a) **Separate disciplinary proceedings from criminal procedure;**
- (b) **Investigate the specific allegations of ill-treatment which have been brought to the attention of the Committee and transmit the results of such investigations;**
- (c) **Promptly and impartially investigate all cases of disappearance of former members of the South West Africa's Peoples' Organisation (SWAPO) and bring to justice the perpetrators of those acts.**

131. The Criminal Procedure Act, Act No. 25 of 2004 is not yet enforced or in operation. The state party still uses the Criminal Procedure Act, Act No. 51 of 1977 as amended.

132. The State party wishes to inform the Committee that in the Namibian legal system, disciplinary proceedings are separate from criminal procedure as provided for by the Labour Act, Act No. 11 of 2007 and other legislation. Disciplinary proceedings are based on a balance of probabilities while criminal procedures are based on the notion of proof beyond reasonable doubt.

¹⁹ Section 2(1) of the Geneva Convention Act, Act No. 15 of 2003.

133. All specific allegations of ill-treatment which have been brought to the attention of the Committee will be investigated and results transmitted to the relevant authorities for consideration.

134. On the issue, of the disappearance of former members of the South West Africa Peoples's Organisation (SWAPO), we refer the Committee to the state party's earlier response on the issue as provided for in paragraph 10.

List of issues, paragraph 31

According to information before the Committee:

(a) There is "compelling evidence" that certain witnesses in the Caprivi case have been subjected to torture;

(b) Mass graves were reportedly discovered in northern Namibia and southern Angola, apparently containing bodies of people unlawfully killed between 1994 and 2002 by Namibian and Angolan security forces. Suspected supporters of the Angolan armed group the National Union for the Total Independence of Angola (UNITA), were allegedly targeted by the security forces, particularly in the late 1990s and in early 2000.

135. Article 12 (1) (f) of the Namibian Constitution and the Criminal Procedure Act 51 of 1977 at sections 217 and 219A provides that no court shall admit in evidence testimony which has been obtained in violation of Article 8(2) (b) which prohibits torture. With regard to the witnesses, they were thoroughly consulted beforehand, inter alia to determine admissibility of their evidence they did not allude to any torture or assaults.

136. Furthermore the allegations of torture of witnesses cannot be regarded as compelling evidence for the following reasons;

- None of the allegations by the witnesses are contained in statements obtained by the police
- None of the witnesses made criminal statements against the police

137. Investigations conducted into the aforementioned allegations established that indeed there exist a mass grave at a village called Ohauwanga in Ohangwena Region, Northern Namibia. This mass grave was discovered by community members in 1972 prior to the country's independence.

138. It has been established that the victims buried there were killed by the then apartheid South Africa Defence Forces. No evidence exists as to the discovery of other mass graves alleged to be the burial places for UNITA combatants.

139. In reference to the above response the Namibian authority has no knowledge of other mass graves. It is important to note that the northern part of Namibia was a war zone during the liberation struggle and Government continues to encourage anyone with information regarding mass graves to come forth so that such can be investigated. Therefore no intimidation or harassment of villagers is taking place in relation to the issue of mass graves.

List of issues, paragraph 32

Article 14 of the Convention

What measures have been taken to implement the recommendation of the Committee that victims of torture in Namibia be given standing to institute, apart from civil action for damages, criminal procedures against the perpetrators of torture? Please inform the Committee on redress, compensation including rehabilitation measures provided to victims of torture or to their families since the examination of the initial report and elaborate on the Legal Aid Act No. 29 of 1990, as amended by the Legal Aid Amendment Act No. 17 of 2000, as well as on the Directorate of Legal Aid. Please explain in detail what has been their effective impact on the concrete improvement of victims' rights. With reference to the previous recommendation of the Committee concerning the cases of disappearance of former members of SWAPO (para. 247), please explain what measures have been taken to ensure that in all situations where there are reasonable grounds to believe that those disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the defendants of the deceased victims are afforded fair and adequate compensation, as per article 14 of the Convention.

140. The Legal Aid Act, Act No. 29 of 1990 as amended by Act, Act No. 17 of 2000 provides for a legal aid scheme in Namibia. This scheme was envisaged by the framers of the Namibian Constitution. Article 95(h) of the Constitution provides for the promotion of “a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid with due regard to the resources of the State”. The Legal Aid scheme is administered by the Directorate of Legal Aid headed by a Director.

141. The Legal Aid scheme is intended to ensure fair trial by providing legal assistance to people with inadequate means to pay for legal services. The granting of legal aid is based on a “means” test as well as a “merit” test. The scheme also provides for both referral and public defender models. Thus, the Director may instruct in-house lawyers (public defenders/ Attorneys) or private legal practitioners. Furthermore, legal aid may also be granted to applicants where the State agents violate individual's right including divorce matters and it is therefore not limited to criminal matters.

142. Victims of crime are as a matter of principle and law represented by the Prosecuting authorities. Section 300 of CPA provides for compensation at the initiative of the Public Prosecutor for liquidated claims.

143. In the case of *Government of the Republic of Namibia and Others v. Mwilima and all the Other Accused in the Treason Trial*²⁰ the Supreme Court ruled that there is an obligation on the Government to provide legal aid to the accused persons. In this case the accused persons (Applicants) were all awaiting trial prisoners in a treason trial. They were refused Legal Aid and had launched an application in the High Court for an order directing the State that such legal aid should be granted. The High Court ruled in favour of the accused/applicants, and ordered that the Director of Legal Aid should provide such legal aid. The State appealed the case to the Supreme Court. The Court held that there is an obligation on Government, to provide legal aid at least in those cases where the interests of justice so require and where the accused is unable to pay for such services from his/her own resources.

²⁰ 2002 NR 235 (SC).

Alleged disappearance of SWAPO members

144. We refer the Committee to the response in paragraph 10 on the issue.

List of issues, paragraph 33**Article 15 of the Convention**

According to information before the Committee evidence obtained under torture has been presented to the High Court in the Caprivi case. Please comment on this allegation and provide information on the measures adopted to implement the principles set out in article 12, paragraph 1 (f), of the Constitution of the State party that evidence obtained under torture is not admissible. Please also indicate whether this prohibition has been integrated in the Criminal Procedure Act No. 25 of 2004 or any other legislation.

145. With regard to the Prima facie evidence of the confessions and admissions allegedly made by the witnesses the court ruled that they were inadmissible because the issue was disputed.

List of issues, paragraph 34**Article 16 of the Convention**

According to information provided by the State party in its report to the Committee on the Elimination of Discrimination against Women (CEDAW/C/NAM/2-3), rape is a matter of serious concern in Namibia. Civil society organizations have termed the high level of child rapes a national emergency. Please provide information on the Combating of Rape Act No. 8 of 2000, as well as on any other law, policy or measure taken by the State party to eliminate sexual violence against women and children. Please also provide statistical data disaggregated by age and gender on the number of reported cases of rape, number of investigations, prosecutions and convictions. Please also provide information on the Domestic Violence Act No. 4 of 2003 and indicate the measures taken by the State party to implement it.

146. Police statistics indicate that approximately 1 100 cases of rape and attempted rape are reported each year. This represents approximately 60 rapes per 100 000 people. Women account for 92 percent of victims of rape and attempted rape and one third of all cases of rape or attempted rape involve children under the age of 18. Research based on police dockets indicates that 67 percent of victims knew the perpetrator.²¹

147. Information relevant to the statistical data is illustrated in the tables below:

Reported Cases of Rape, 2012

<i>Month</i>	<i>Adults</i>		<i>Juveniles</i>		<i>Totals</i>
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	
January	1	52	0	36	89
February	1	65	3	29	98

²¹ Legal Assistance Center. (2006). Rape in Namibia. An assessment of the Operation of the Combating of Rape Act 8 of 2000. Windhoek, Namibia: Legal Assistance Centre. Available at: www.lac.org.na/projects/grap/PDF/rapefullpdf.

<i>Month</i>	<i>Adults</i>		<i>Juveniles</i>		<i>Totals</i>
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	
March	0	71	0	43	114
April	0	57	1	39	97
May	1	50	0	28	79
June	0	66	1	35	102
July	1	45	0	27	73
August	0	58	1	26	85
September	1	57	3	31	92
October	2	64	1	31	98
November	0	58	0	25	83
December	3	67	14	23	107
Total	10	710	24	373	1 117

Source: NAMPOL Crime Prevention Unit, 2012.

Reported cases of assault with intent to rape, 2012

<i>Month</i>	<i>Adults</i>		<i>Juveniles</i>		<i>Totals</i>
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	
January	0	0	0	0	0
February	0	0	0	0	0
March	0	0	0	0	0
April	0	0	0	0	0
May	0	0	0	0	0
June	0	0	0	0	0
July	0	0	0	0	0
August	0	1	0	0	1
September	0	1	0	0	1
October	0	0	0	0	0
November	0	0	0	0	0
December	0	0	0	0	0
Total	0	2	0	0	2

Source: NAMPOL Crime Prevention Unit, 2012.

Reported cases on sexual offences with youths, illicit canal intercourse, 2012

<i>Month</i>	<i>Adults</i>		<i>Juveniles</i>		<i>Totals</i>
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	
January	0	0	0	1	1
February	0	0	0	0	0
March	0	0	0	0	0

<i>Month</i>	<i>Adults</i>		<i>Juveniles</i>		<i>Totals</i>
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	
April	0	0	0	0	0
May	0	0	0	0	0
June	0	1	0	0	1
July	0	0	0	0	0
August	0	1	0	2	3
September	0	0	0	0	0
October	0	0	0	2	2
November	0	0	0	1	1
December	0	0	0	0	0
Total	0	2	0	6	8

Source: NAMPOL Crime Prevention Unit, 2012.

148. Parliament enacted the Combating of Rape Act which came into force in June 2000. The new law defines rape as the “intentional commission of a sexual act under coercive circumstances”. The Combating of Rape Act has a new definition of rape that gives greater protection against rape to women, men, girls and boys. It provides severe minimum sentences for rapists and stricter bail conditions for people accused of rape. The minimum sentence for repeat offenders is 10, 20 or 45 years, depending on the circumstances of the rape. The maximum sentence for any rape is life imprisonment. It provides for new rules that make the criminal trial less traumatic for the person who has been raped and it protects the privacy of the person who has been raped.

Other legislative measures in place

149. Sections 158A and 216A of The Criminal Procedure Amendment Act, Act No. 24 of 2003 provide for the making of special arrangements for vulnerable witnesses and further regulates the admissibility of certain unsworn or unaffirmed evidence and to determine the weight to be attached to certain evidence; it further makes provision for the manner of cross-examination of witnesses under a certain age.

150. The Labour Act, Act No. 11 of 2007 prohibits direct or indirect sexual harassment of an employee in any employment.

151. The Combating of Immoral Practices Amendment Act, Act No. 7 of 2000, makes sexual contact with boys and girls under the age of 16 a criminal offence where the other party is more than 3 years older.

Policies and Code of Conduct

152. The Government revised the Gender Policy and Plan of Action of 1997 in 2010 covering the period up to 2020. The policy has allowed the Government to recognise new and emerging issues such as the increasing burden of HIV/AIDS, human rights and peace building and gender in family context. The principles of the National Gender Policy include among other to ensure that men and women are equal, women’s rights are human rights, affirmative action should be used to promote gender equality, there should be zero tolerance for gender based violence.

153. In the educational setting, the Code of Conduct for the Teaching Service states that teachers may not become involved in any form of romance or sexual relations with a

learner or sexually harass or abuse a learner. The General Rules of Conduct for Learners say that learners must respect the dignity, person and property of teachers, other learners and members of the public.

List of issues, paragraph 35

Please provide detailed information on the allegation of rape against San women and the two cases of rape reported in the Osire Refugee Camp in 2006. Please explain in detail what measures the State party has taken to investigate and prosecute the perpetrators and provide these women with adequate remedies and compensation, including rehabilitation and psychological recovery services.

154. Incidence of Rape against women including San women is a serious concern to the Government and as such measures have been put in place to address the problem. All rape victims, including the San women are encouraged to report cases of rape to the Women and Child Protection Units, which are found throughout the country. After an investigation by the Ministry of Home Affairs and Immigration, the said allegations of rape against San women and those at Osire could not be substantiated.

List of issue, paragraph 36

According to information before the Committee, children do not get the type of special protection that they require in the area of the administration of justice, in particular in the criminal justice system. It has also been reported to the Committee that juveniles are held together with adult offenders and that a mentally handicapped 16-year-old boy has been a victim of sexual assaults while locked up with adult convicts in Windhoek Central Prison. Please comment on these allegations and explain what measures the State party has taken to establish an appropriate juvenile criminal justice system. In this relation, please indicate whether the State party has adopted a legislation or policy on juvenile justice; in particular clarify the information relating to the adoption of a child justice bill.

155.—In terms of section 254 of the Criminal Procedure Act, Act No. 51 of 1977 as amended, a court may refer a juvenile accused to a children's court.

156. The screening of child offenders was shifted to the Ministry of Gender Equality and Child Welfare during 2007 as the said Ministry has the mandate related to the welfare of children.

157. The Ministry of Gender Equality and Child Welfare has provided regular annual training since 2008 to role-players to give information on how children in conflict with the law should be dealt with according to the United Nations Convention on the Rights of the Child, particularly Articles 37 and 40.

158.—An investigation was conducted pertaining to the issue of the 16 year old boy and it was found that the Windhoek Correctional Facility never admitted a mentally disabled juvenile.

159. The Child Care and Protection Act which was tabled in parliament in 2014 is a comprehensive proposed piece of legislation for protecting and promoting children's rights. It deals with child abuse and neglect, adoption, children's courts, children's homes, places of safety and vulnerable groups such as street children and child prostitutes.

160. The Child Justice Bill once promulgated aims to regulate the juvenile justice system and ensure that children and young people in conflict with the law have access to diversion programmes.

161. Moreover, as per the provisions in the Correctional Service Act, Act No. 9 of 2012, juvenile offenders who are sentenced to imprisonment terms are accommodated separate from adult offenders in all Namibian Correctional Service facilities.

162. The Namibian Correctional Service takes particular care to ensure that juvenile offenders are not uprooted from their sources of support. In line with international best practices the Namibian Correctional Service ensures that, as far as practicable, juvenile offenders serve their sentences at correctional facilities that are as near as possible to their families or places of origin.

List of issues, paragraph 37

Please provide clarification on the juvenile justice forums, the Arrest and Awaiting Trial Committee, as well as the Inter- Ministerial Committee on Juvenile Justice. The State party has reported in its initial report to the Human Rights Committee (CCPR/C/NAM/2003/1, para. 273) that a new prison is under construction at Rundu, which will be the only prison in the country for juveniles. Please provide updated information on progress made towards the construction of this prison and indicate whether the construction of a remand home for juveniles is envisaged by the State party.

163. In June 1994, The Juvenile Justice Forum was established after a national workshop on children's rights, at which delegates had expressed their concerns at the lack of juvenile justice in Namibia.

164. Representatives from government ministries and agencies as well as relevant Non-Governmental Organisations took part in the forum. The Forum intended to address issues relating to the apparent lack of an effective juvenile justice system in the country. The Legal Assistance Centre was tasked with the duty of starting a "diversion" programme for juvenile offenders in the district of Windhoek. This pilot period began in April 1995 and ended in April 1996.

165. In addition, The Inter Ministerial Committee (IMC) on Juvenile Justice in 1999 was commissioned with the task to discuss issues relating to juvenile justice in Namibia. It aimed at setting out both the domestic and international legal framework for dealing with children in conflict with the law.

166. The construction of Elizabeth Nepemba Correctional Facility at Rundu was initially intended to be a juvenile centre for all incarcerated juveniles under the age of eighteen (18) years. However, the idea could not materialize as there were not enough juvenile offenders to utilize the facility efficiently. The Correctional Facility was therefore, upgraded to a Medium Security Level facility with a lock up capacity of three hundred and twenty (320) offenders.

167. Currently the total of juveniles incarcerated in the Namibian Correctional Service Facilities stands at Twelve (12) Male and One (1) Female as on 27 August 2014 these juveniles are locked up separately from the adults and proper security is exercised to ensure that Juveniles and adults are not associating.

168. Regarding the construction of remand homes for juveniles, the Correctional Service currently has no plans to build remand facilities specific for juvenile offenders. However, plans are underway to construct six (6) remand facilities countrywide and the designs of the abovementioned facilities will consist of wings/sections for juvenile offenders.

List of issues, paragraph 38

Please provide information and statistical data on the extent of human trafficking from and within the State party and indicate whether the State party has adopted legislation or any other measure to criminalize human trafficking, especially that of women and children. Please provide updated information on the case reported by the State Party concerning the transport of two young Namibian girls to South Africa for the purpose of sexual exploitation and comment on the information before the Committee according to which Zambian and Angolan children were trafficked to Namibia for domestic servitude, agricultural labour and livestock herding. In its initial report to the Human Rights Committee (CCPR/C/NAM/2003/1, para. 107), the State party stated that some commercial farmers still employ workers under slavery conditions. Please provide further detail on this information and indicate the measures taken to address this situation.

169. The State party has no specific detailed legislation that deals with offences of human trafficking; it is often a challenge to successfully prosecute suspected cases of the human trafficking. It is against this background that there is no reliable data on the extent of human trafficking from within the State party. There have only been cases of human smuggling brought before courts of law, invoking the limited provisions contained in the Prevention of Organised Crime Act of 2004. A number of convictions were secured in this regard.

170.—On 16 August 2002, Namibia ratified the Protocol to Prevent, Punish, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organised Crime. Parliament subsequently enacted the Prevention of Organised Crime Act, 2004, which contains a provision which criminalises and prohibits smuggling of migrants and trafficking in persons. However, this provision does not address fully the various aspects of human trafficking which need to be regulated. In light of the said shortcoming, the Government has therefore embarked on the drafting of dedicated legislation to operationalize the trafficking in person's protocol.

171. Other laws that are in existence which can be invoked to prosecute a suspected case of human trafficking are:

- ▲—Section 153 of the Criminal Procedure Act, Act No. 51 of 1977, which provide for the protection of witnesses in human trafficking cases
- ▲—The Police Act, Act No. 19 of 1990, which empowers the police to investigate cases of human trafficking

172. It is also worth noting that the borders between Namibia and Angola, Namibia and Zambia and Namibia and Botswana remain porous and makes it difficult to prevent illegal entry and exit. Another factor contributing to allege human smuggling and trafficking is that there are families/relatives living along the border on either side. They speak the same languages and share similar cultural traits, and often children visit family members on the Namibian side. This fact makes it difficult to identify victims of human trafficking and migrant smuggling. However, efforts are underway to train immigration officials in the identification of potential human trafficking and smuggling cases.

173. On the issue of some commercial farmers who still employ workers under slavery conditions, the Ministry of Labour and Social Welfare, as well as the Ministry of Gender Equality and Child Welfare, and the Ministry of Safety and Security conducted targeted child labour inspections throughout the country during 2009 and 2010. These inspections were conducted in Zambezi (former Caprivi), Kavango, Oshana, Otjozondjupa, Ohangwena, Omusati and Omaheke Regions. Having discovered child labour practices, the Ministry issued 111 compliance orders in terms of section 126 of the Labour Act, Act No. 11 of 2007 and made a wide variety of recommendations on public awareness-raising,

the prosecution of offenders, supportive services and reintegration measures for child workers withdrawn from employment and addressing human trafficking.

174. At the end of 2010 a follow up inspection indicated that most of the employers who were subject to compliance orders had complied, and that those who were persistent in employing children charges were laid against them with the Namibian Police.

List of issues, paragraph 39 and recommendation 250

Please explain the measures taken by the State party to implement the recommendation of the Committee to abolish corporal punishment and indicate what steps have been taken by the State party to protect the rights of Human Rights defenders.

175. Article 8(2) (b) of the Constitution prohibits punishment or treatment that constitutes torture, or cruel, inhuman, or degrading treatment.

176. In the case of *Ex Parte Attorney-General, In Re: Corporal Punishment by Organs of State*,²² Corporal punishment was abolished and has been declared unconstitutional by the Supreme Court. In addition section 56 of the Education Act, (Act. No. 16) of 2001 prohibits corporal punishment in schools. The Prisons Act of 1959 was replaced by the Correctional Service Act, Act No. 9 of 2012. The latter prohibits corporal punishment against prisoners.

177. The Constitution of the Republic of Namibia under chapter 3 protects and promotes all fundamental freedoms, including the rights of Human Rights Defenders. The State party wishes to affirm that there are no cases/or reports of Human Rights defenders being persecuted or arrested by the government while carrying out their work. Any human rights defender whose rights have been violated can seek redress from the courts.

178. The Namibian media is one of the major role players in the promotion of human rights in the country. The Namibian media has for consecutive years been lauded by international organizations as the freest on the African continent. Furthermore, the Namibian media is self-regulating and has its own Media Ombudsman and Constitution.

179. The following are other notable non-governmental organizations dealing with human rights and democracy currently operating freely in Namibia:

- Legal Assistance Centre (LAC), a public interest law centre that has been operating in Namibia since the apartheid era
- National Institute of Democracy (NID), a locally based NGO with special emphasis on the promotion of democracy and the rule of law in Namibia
- NamRights, also a local NGO, which is very critical of some of the government policies. This NGO has continuously submitted shadow reports to treaty bodies and international legal instruments to which Namibia is a State party

180. The Namibian Non-Governmental Organisation Forum (NANGOF) is an umbrella organization that represents most NGOs in the country and it operates independently from government.

²² *Ex Parte Attorney-General, In Re: Corporal Punishment by Organs of State* NR 178 (SC); 1991 (3) SA 78 (Nms). See attached case.

List of issues, paragraph 40

Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threats of terrorism, and please indicate if, and how, these have affected human rights safeguards in law and practice. Please provide information on the stage at which the enactment of the anti-terrorism bill is at present. Does this legislation comply with the requirements of the Convention and with the State party obligations under international human rights laws?

181. Prior to the enactment of the Prevention and Combating of Terrorist Activities Act as amended,²³ the following legislation could be invoked to deal with terrorism-related cases.

182. Defence Act, Act No. 1 of 2002 deals with national defence, terrorism, armed conflict, internal disorder and other Emergencies.

183. Civil Aviation Offences Amendment Act, 1992 gives effect to the following three (3) International Aviation Security Conventions:

(i) The Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft, 14 September 1963;

(ii) The Hague Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971.

184. Explosives Act, Act No. 26 of 1956. The Act aims to consolidate the laws relating to the manufacture, storage, sale, transport, importation, exportation and the use of explosives. The Act is read in conjunction with the Arms and Ammunition Act of 1996.

185. The Police Act, Act No. 19 of 1990 as amended the purpose of the Act, is to regulate the powers and duties of the Force and to prescribe the procedures in order to secure the internal security of Namibia and to maintain law and order.

186. The Financial Intelligence Act, Act No. 13, of 2012 is aimed at providing for the establishment of the Financial Intelligence Centre as the national center responsible for collecting, requesting, receiving and analyzing suspicious transaction reports and suspicious activity reports which may relate to possible money laundering or the financing of terrorism; to provide for the objects, powers and functions of the Centre; to provide for the combating of money laundering and financing of terrorism activities; to provide for the establishment of the Anti-Money Laundering and Combating of the Financing of Terrorism Council, and for its functions; to provide for the registration of accountable and reporting institutions; to provide for the powers and functions of the supervisory bodies; to empower the Minister to appoint an appeal board to hear and decide appeals against decisions of the Centre or supervisory bodies; and to provide for incidental matters.

The impact of Anti-terrorism legislation in respect of human rights

187. The Namibian Constitution guarantees certain fundamental human rights and freedoms. In the enforcement of these fundamental rights and freedoms, parliament or any subordinate legislative authority may not take any actions which abolish or abridge the fundamental rights and freedoms conferred by the Constitution (Article 25).

188. The power to interfere with the privacy of a person's correspondence or home are, however, subject to the rights and freedoms guaranteed by the Constitution, and may only be exercised on the grounds of public safety, the prevention of disorder or crime and for the

²³ Act No. 12 of 2012.

protection of rights and freedoms of others. The power to limit a person's freedom of movement by erecting road barriers in Namibia is authorized only on the grounds of national security, public order or the incitement to an offence.

List of issues, paragraph 41

Please provide information on steps undertaken by the State party to make the declaration under article 22 of the Convention.

189. The State party takes note of the Committee's recommendation for Namibia to make the declaration under article 22 of the Convention. However, the State party has competent institutions and organs of state that are capable of handling judicial and quasi-judicial matters including the offence of alleged incidents of torture and other cruel, inhuman or degrading treatment or punishment.

List of issues, paragraph 42

Please provide detailed information on any difficulties preventing the State party from fully implementing the provisions of the Convention and the Committee's previous recommendations. Please indicate the measures that have been taken to widely disseminate the Convention, as well as the Committee's conclusions and recommendations and the written answers of the State party to the Committee's oral questions, in all appropriate languages in the State party, including through the media and non-governmental organizations. Please indicate how civil society organizations have been involved in the preparation of the report.

190. The State party acknowledges the Committee's concern relating to the delay in implementing the provisions of the Convention and its previous recommendations as well as list of prior issues; this is mainly due to the prolonged process in enacting legislation on torture.

191. The State party has not disseminated the Convention, but, the Office of the Ombudsman has compiled and published a list of all concluding observations of various treaty bodies in respect of reports which Namibia had submitted and these were distributed to members of parliament. Moreover, NGOs like the Legal Assistance Centre have their own projects and programmes that help disseminate the provisions of international legal instruments as well as national human rights legislation in indigenous languages.

192. The Namibian Non-governmental Organization Forum (NANGOF), an umbrella for most NGOs in the country is represented on the Inter-ministerial Committee on Human Rights and Humanitarian Law (IMC). The IMC is a standing Committee established by the Government, coordinated by the Ministry of Justice and is responsible for compiling State Reports.

List of issues, paragraph 43

Does the State party envisage ratifying the Optional Protocol to the Convention? If so, has the State party taken any steps to set up or designate a national preventive mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

193. It should be noted once again that Namibia follows what is known as a monist approach to the reception of international instruments and rules of international law in its domestic legal system. Article 144 of the Namibian Constitution provides that the general rules of public international law and international agreements binding upon Namibia shall

form part of the law of Namibia. Thus the Namibian Constitution explicitly incorporates international law and makes it part of the law of Namibia. In light of the above, the Government undertakes a thorough study of the international instruments to ensure that national laws are harmonized to meet the requirements of the international instruments before they are signed, ratified and/or acceded to. This approach shall be used for the consideration of all international instruments which Namibia has not yet ratified.

List of issues 44

Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the initial periodic report, including any relevant jurisprudential decisions.

194. The following pieces of legislation were passed by parliament since the last initial report for the promotion and protection of human rights.

195. The Criminal Procedure Amendment Act, Act No. 24 of 2003 makes provision for special arrangements for vulnerable witnesses in most rape cases giving testimony via closed circuit television or from behind a screen.

196. Maintenance Act, Act No. 9 of 2003. The Act stipulates that all parents have a legal duty to maintain their children. Both parents share responsibility for the support of their children, regardless of whether the children are born inside or outside of a marriage and regardless of any contradictory rules under customary laws.

197. Affirmative Action (Employment) Act, Act No. 29 of 1998. The Act aims to redress the disadvantages arising from past discriminatory laws and practices through appropriate affirmative action plans for three designated groups; such as persons from racially disadvantaged groups, women, and persons with disabilities.

198. Combating of Rape Act, (Act No. 8). of 2000, the Act provides for an extensive definition of rape that focuses on acts of coercion used by the accused.

199. Section 3 (g) of the Traditional Authorities Act, (Act No. 25) of 2000, provides for promotion of affirmative action amongst the members of that community, particularly by promoting women to positions of leadership.

200. Communal land Reform Act, (Act No. 5) of 2002, the Act governs the allocation of communal land. It provides that widows have a right to remain on communal land allocated to their late husbands, even if they remarry. It further provides that women must be represented on the communal land Boards to monitor the implementation of the Act.

201. Combating of Domestic Violence Act, (Act No. 4) of 2003, the Act gives an extensive definition of domestic violence, including physical, sexual, economic, verbal, emotional and psychological, intimidation and harassment. It provides for the issuing of protection orders and police warnings in domestic violence matters.

202. Labour Act, (Act No. 11) of 2007, makes more generous provisions for maternity benefits. It outlaws discrimination in workplaces on the basis of pregnancy and HIV/AIDS status, and it prohibits sexual harassment.

203. The Prevention of Organized Crime Act, (Act No. 29) of 2004, specifically criminalizes trafficking in persons, slavery, kidnapping, and forced labour, including forced prostitution, child labour, and human smuggling.

204. The Children's Status Act, Act No. 6 of 2006 provide for inheritance of children born outside marriage to be treated equally regardless of whether they are born inside marriage or outside marriage.

List of issues, paragraph 45

Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the initial periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

205. In 2005 the Government established a full-fledged Ministry (Ministry of Gender Equality and Child Welfare) to promote and protect the rights of women and children.

206. In addition, The Anti-Corruption Act, (Act No. 8) of 2003 which established the Anti-Corruption Commission provides for the prevention and punishment of corruption in the country.

207. The National Disability Council Act, (Act No. 26), of 2004 established the National Disability Council whose aim is to protect and promote the rights of persons living with disabilities in Namibia.

208. On the education front and in line with article 20 of the Namibian Constitution, the Government implemented a policy of free primary education in all state funded schools. Plans are underway to make secondary education as well as tertiary education free in the near future.

209. The Forestry Act, (Act No. 12) of 2001, provide for the establishment of a Forestry Council and the appointment of certain officials; to consolidate the laws relating to the management and use of forests and forest produce; to provide for the protection of the environment and the control and management of forest fires.

Part II

The second part of the report contains information on Namibia's obligations towards CAT as recognized under relevant articles of the Convention. The information below amplifies the responses given in the first part of the report.

1. Implementation of the Convention: Articles 1 and 2

210. On the question of the implementation of the Convention into the legal system, The State party refers the Committee to the information in paragraph 3 above. Namibia does not yet have a specific legislation to criminalize the offence of torture in terms of the Convention; however torture is prohibited under Article 8 of the Namibian Constitution.²⁴

211. In terms of the Criminal Procedure Act and the common law alleged incidences of torture are considered as assault with intent to cause grievous bodily harm or civil wrong, attracting criminal or civil proceedings. The matter is therefore regarded as a crime and the victim can sue for civil relief in criminal proceedings. In the Namundjebo²⁵ Case mentioned earlier, the court held that: "The accession of Parliament to both the Convention against

²⁴ Supra note 9.

²⁵ Supra note 12, p. 19.

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR) on 28 November 1994 is significant. Both these instruments contain provisions similar to our Article 8 and Article 10.1 of the ICCPR provides specifically that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

212. By virtue of article 144²⁶ of the Namibian Constitution, the provisions of the Convention against Torture became part and parcel of the domestic law immediately when the State party acceded and ratified the treaty.

2. Refoulement, Extradition, Jurisdiction and expulsion: Articles 3, 4, 5, 6, 7, 8 and 9

Refoulement

213. Namibia signed the 1951 United Nations Refugee Convention and the 1967 Protocol on February 17, 1995. It also acceded to the Organisation of the African Unity’s (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa of 1969) on September 2, 1994. All the above Covenants strongly emphasize the principle of non-refoulement.

214. To fully comply with her international obligations towards the above treaties, several laws have been enacted to that effect. The Namibia Refugees (Recognition and Control) Act 2 of 1999 (Refugees Act) and Regulations²⁷ came into operation in 2000. This Act makes provision for the recognition and control of refugees in Namibia and gives effect to certain provisions of the 1951 and OAU Refugees Conventions. It also provides for the appointment of a Commissioner for refugees and establishes the Namibia Refugees Committee. The Act further sets out the powers, duties and functions of the Committee. It provides an explanation of the concept of “refugee” and stipulates procedures for the determination of refugee status. The Act also establishes an Appeal Board as well as the procedure to appeal.

215. To date there have never been any cases of refoulement reported in Namibia.

Extradition

216. The Extradition Act, Act No. 11 of 1996 provide for the extradition of persons accused or convicted of certain crimes committed within the jurisdictions of certain countries.

217. In terms of Section 5, the Act contains restrictions on return of requested persons.²⁸

218. The SADC Protocol on Extradition, 2002. Namibia is a state party to the Protocol which provides for member states to render assistance to each other in extradition matters.

3. Education and information regarding the prohibition against torture, treatment of prisoners, impartial investigations of cases of torture, complaint mechanisms: Articles 11, 12, and 13

219. The state party refers the Committee to paragraphs 96-100 regarding the above concern.

²⁶ Article 144 of the Namibian Constitution states that: Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

²⁷ Act 2 of 1999 (Refugees Act) and Regulations.

²⁸ See attached Section 5 of the Extradition Act.

4. Compensation and rehabilitation: Article 14

220. Civil claims and compensation for damages are instituted in Lower and High Courts in terms of their respective legislations on civil procedure. The Apportionment of Damages Act, Act No. 34 of 1956 Act apportions damages in cases of contributory negligence or joint. Currently, there is no specific law that deals with the right to rehabilitation for victims of torture in Namibia. However, a victim of torture can approach any government health facility to seek treatment.

5. Inadmissibility of statements, admissions and confessions made under torture: Article 15

221. The Namibian Constitution under Article 12 proscribes the admissibility of evidence obtained through torture to be presented in the court of law.²⁹ Any statement, admission or confession should be done voluntarily and without any undue influence.³⁰ Section 219³¹ of the CPA also addresses the question of admissibility of admissions in a court of law.

²⁹ Article 12 of the Namibian Constitution provides for rights concerning a fair trial – Article 12 (1) (f) in particular provides for the right against self-incrimination and the right to have evidence obtained in violation of Article 8 (2) (b) to be excluded.

³⁰ Section 217 (1) of the Criminal Procedure Act 16 which reads as follows: Evidence of any confession made by any person in relation to the commission of any offence shall, if such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, be admissible in evidence against such person at criminal proceedings relating to such offence provided that: (a) a confession made by a peace officer, other than a magistrate or justice, or in the case of a peace officer referred to in section 334, a confession made to such a peace officer which relates to an offence with reference to which such peace officer is authorized to exercise any power conferred upon him under that section, shall not be admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or justice; and (b) that where the confession is made to a magistrate and reduced to writing by him, or confirmed and reduced to writing in the presence of a magistrate, the confession shall, upon mere production thereof at the proceedings in question (i) be admissible in evidence against such person if it appears from the document in which the confession is contained that the confession was made by a person whose name corresponds to that of such person, and in the case of a confession made to a magistrate or confirmed in the presence of a magistrate and the presence of an interpreter, if a certificate by the interpreter appears on such document to the effect that he interpreted truly and correctly and to the best of his ability with regards to the contents of the confession and any question put to such person by the magistrate; and (ii) be presumed, unless the contrary is proved, to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, if it appears from the document in which the confession is contained that the confession was made freely and voluntarily by such person in his sound and sober senses without having been duly influenced thereto.

³¹ Section 219 of the Criminal Procedure Act deals with the admissibility of admissions by an accused. (1) evidence of any admission made extra-judicially by any person in relation to the commission of an offence shall, if such admission does not constitute a confession of that offence and is proved to have been voluntarily made by that person, be admissible in evidence against him at criminal proceedings relating to that offence: provided that where the admission is made to the magistrate and reduced to writing by him or is confirmed and reduced to writing in the presence of the magistrate, the admission shall upon the mere production at the proceedings in question of the document in which the admission is contained- (a) be admissible in evidence against such person if it appears from such document that the admission was made by a person whose name corresponds to that of such person and, in the case of an admission made to a magistrate or confirmed in the presence of a magistrate through an interpreter truly and correctly and to the best of its ability with regard to the contents of the admission and any question put to such person by the magistrate; and (b) be presumed, unless the contrary is proved, to have been voluntarily made by such person if it appears from the document in which the admission is contained that the admission was made voluntarily by such person. (2) The prosecution

222. In *S v. Gariseb and Another*,³² both accused persons were charged with two counts namely: Murder and housebreaking with intent to rob and robbery with aggravating circumstances. Each accused made an admission of pointing out and a confession. The court held a trial-within-a-trial after the defence objected to the production of the statements on the grounds that the statements were not made freely and voluntarily.

223. It was alleged that, a police officer who took a statement for an accused person proceeded to take a confession despite the fact that the accused was assaulted during his arrest. The accused gave a statement about five days from the time of his arrest. Assault marks were visible. The statement cannot be said to be free and voluntary, and the possibility that accused was still instilled with fear cannot be excluded.

224. The court held that: “The State bears the *onus* of proof to prove that the admissions or confessions made by the accused persons were made freely and voluntarily without undue influence. The standard of proof required is that of beyond a reasonable doubt. The state should also prove that the accused made those admissions when he was in his sober and sound senses. In addition, the court must be satisfied that the rights of the accused persons had been adequately explained, including the right of accused to apply for legal aid. A failure to do so may render the statement to be inadmissible.”

225. The court further emphasized that the admissibility of confessions should meet the requirements of section 217 of Act 51 of 1977 and admissibility of admissions should meet the requirements of section 218 of the same Act.

6. Undertaking by the State Party to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1: Article 16

226. Namibia’s main challenge regarding Article 16 of the Convention continues due to the absence of enactment of the legislation to criminalize torture.

may lead evidence in rebuttal of evidence adduced by an accused in rebuttal of the presumption under subsection (1).

³² *S v. Gariseb and Another* (CC 16/2010) [2013] NAHCMD 25 (30 January 2013). Available online at: <http://www.saflii.org/na/cases/NAHCMD/2013/25.html>.

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