



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

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Committee against Torture

**Third periodic report submitted by Namibia
under article 19 of the Convention, due in 2020***

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* The present document is being issued without formal editing.



Foreword

The Republic of Namibia is pleased to submit the third report to the Committee against Torture (CAT) in terms of Article 19(1) the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). This report outlines the various legislative, administrative, judicial and other institutional measures undertaken by the Namibian Government to give effect to the obligations of the State party under the UNCAT since the submission of Namibia's second report in 2015.

As a State party to the UNCAT, the Namibian Government is required to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment. This commitment is a constitutional imperative under article 8(2)(b) of the Namibian Constitution which emphatically provides that "no persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment".

Since the submission of Namibia's second report to the CAT, the Government has made significant progress to promote and protect human rights and fundamental freedoms, particularly with regards to the prevention of torture. The most important progress includes the operationalisation of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) and the enactment of the Whistleblower Protection Act, 2017 (Act No. 10 of 2017), the Witness Protection Act, 2017 (Act No. 11 of 2017), as well as the Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018). These laws provide enhanced protection to children against inhuman and degrading treatment and more specifically it provides support to victims who speak out against corruption, maladministration and outlaw pre-independent and discriminatory laws that were still in force in Namibia.

The Namibian Government recognises several reported cases in which organs of the State, such as the members of the Namibian Police and Defence Force are accused of using brutal or excessive force against civilians. I wish to make it clear that it is not a State policy to permit the use of brutal or excessive force against any person. As previously mentioned above, the Namibian Constitution prohibits torture as well cruel, inhuman or degrading treatment or punishment but there are also other legal frameworks in place, such as the Criminal Procedure Act, 1977 (Act No. 51 of 1977) which criminalize murder as well as assault, irrespective of who the perpetrator is. Suffice to say, the responsible individuals are investigated under the internal complaints unit and those found guilty of acting outside the scope of what is reasonable in the circumstances are subject to laid down procedures, including arraignment before a competent court of law. Other responsible officials have already been sentenced as is evident from the case of *S v Shetekela*, in which three members of the Windhoek City Police were found guilty of murder and defeating the course of justice and subsequently sentenced to 14 years imprisonment.¹ In addition to Namibia's legislative and judicial framework, the Office of the Ombudsman has also launched a Training Manual to train police officers to understand the concept of torture, both from an international, regional and national perspective, and how to prevent any acts that would amount to torture and the violation of entrenched human rights.

Lastly, the Namibian Government acknowledges that increasing cases of Gender-Based Violence (GBV), particularly against women, remains a challenge across the country. Despite a plethora of laws protecting women against torture, cruel and inhuman treatment and punishment, the number of so called "crimes of passion" are on the increase. To address this scourge, the Namibian Government is reviewing the Maintenance Act, 2003 (Act No. 9 of 2003) and has finalized amendments to the Combating of Domestic Violence Act, 2003 and the Combating of Rape Act, 2000 (Act No. 8 of 2000) to introduce better factual language to improve the protection for all Namibians against GBV. It also includes proposals to increase the minimum sentences for rape to demonstrate the State party's resolve to deter offenders from committing the offence of rape.

¹ (CC 10/2014) [2020] NAHCMD 275 (8 July 2020).

The Government of the Republic of Namibia continues to remain steadfast in implementing its obligations under the UNCAT and other instruments for the benefit of upholding, protecting and promoting human rights and fundamental freedoms for all.

Yvonne Dausab, MP

Minister of Justice

Abbreviations

APT:	Association for the Prevention of torture
DRC:	Democratic Republic of Congo
GBV:	Gender-Based Violence
HIV/AIDS:	Human Immunodeficiency Virus
IID:	Internal Investigations Directorate
ILEA:	International Law Enforcement Academy
IMC:	Inter-Ministerial Committee on Human Rights and International Humanitarian Law
LAC:	Legal Assistance Centre
LGBTQI:	Lesbian, Gay, Bisexual, Transgender Queer, & Intersex Life
NAPS:	National Action Plan on Statelessness
NANHRI:	Network of African Human Rights Institutions
NBC:	Namibia Broadcasting Corporation
NGO:	Non-Governmental Organisation
NCS:	Namibian Correctional Service
NAMPOL:	Namibian Police
NDP:	National Development Plan
NDF:	Namibian Defence Force
NRM:	National Referral Mechanism
NUST:	Namibian University of Science and Technology
NWCS:	National Working Committee on Statelessness
OAU:	Organisation of the African Unity
ORMCS:	Offender Risk Management Correctional Strategy
OHCHR ROSA:	Regional Office for Southern Africa (ROSA) of the United Nations High Commissioner for Human Rights
SADC:	Southern African Development Community
SOPs:	Standard Operating Procedures
SRH:	Sexual Reproductive Health
TIP:	Trafficking in Persons
UN:	United Nations
UNAM:	University of Namibia
UNCAT:	United Nations Convention against Torture
UNFPA:	United Nations Population Fund

Introduction

1. 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. In 2015, Namibia submitted her second periodic report under the Convention and her report was considered in 2016.
2. Namibia has since fulfilled some of the recommendations made by the Committee against Torture in the last report. The Government has devised legal and policy frameworks aimed at combating all forms of torture, cruel, inhuman treatment or punishment. The State party acknowledges that protecting and promoting human rights in the country is financially demanding. However, this has not deterred or prevented the Government from spending millions of Namibian dollars on devising various anti-torture mechanisms. Laws and policies have been created and institutions have been commissioned in this regard.
3. In her quest to enhance human rights protection, the State party continues to work with civil society organisations, aid agencies, local and international NGOs and United Nations agencies.

Reporting methodology

4. This report was drafted/compiled by the Ministry of Justice in collaboration with the Inter-Ministerial Committee on Human Rights and International Humanitarian Law, various stakeholders such as NGOs, the University of Namibia and other critical government ministries and agencies were consulted on the contents of the report. The United Nations Population Fund (UNFPA) provided technical and financial assistance to this exercise. The Inter-Ministerial Committee on Human Rights and International Humanitarian Law is a body responsible for drafting/compiling human rights reports in the country. It is coordinated by the Ministry of Justice. Namibia is therefore pleased to present her 3rd Periodic report to the Committee. The report has two parts: the first part contains responses to the concluding observations by the Committee against Torture considering the list of issues contained in communication (CAT/C/NAM/CO/2) which the Committee wanted Namibia to consider prior to the submission of the third periodic report. The second part contains general information on the implementation of the Convention against Torture in relation to the relevant articles in the Convention.

Part I

Responses to concluding observations and recommendations on the second periodic report of Namibia

Reply to paragraph 9 of the concluding observations (CAT/C/NAM/CO/2)

5. We acknowledge the delay of the enactment of the Prevention and Combating of Torture Bill, however the State party wish to inform the Committee that the Bill is currently under review by the Ministry of Justice to address some of concerns raised in the National Assembly concerning, amongst others, the appropriate penalties for torture, before it can be re-tabled in Parliament during 2021.

Reply to paragraph 11 of the concluding observations

6. As per the last report, Article 12 of the Namibian Constitution guarantees the right to a fair trial and in that sense, all fundamental legal safeguards. The provisions of Article 12 are further entrenched under section 11 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Reply to paragraph 13 of the concluding observations

7. The Ombudsman Bill has been approved in principle by Cabinet. The Bill will be submitted and discussed by the Cabinet Committee on Legislation before it is finalized and submitted for certification to the Attorney-General for tabling in the National Assembly. The Bill provides for the appointment of both the Ombudsman and the Deputy Ombudsman by Proclamation in the Government Gazette. Moreover, it recommends the establishment of an office in the public service that will be called the Office of the Ombudsman. This office will be responsible for providing administrative and financial support services and related matters of the Office and assist the Ombudsman in performing his or her powers, functions and duties as provided for in the Namibian Constitution, in the Bill or any other law. This Office will consist of the Ombudsman, Deputy Ombudsmen, including Children's Advocate and the staff members, some of whom will be designated as complaints investigators. It is also worth noting that in October 2018 the Office of the Ombudsman was re-accredited with an A-status in terms of the Paris Principles.

Reply to paragraph 17 of the concluding observations

8. Section 64 of the Correctional Service Act, 2012 (Act No. 9 of 2012) provides for separation and security classification and re-classification of offenders on admission to a correctional facility in one or more of the following groups, namely; (a) convicted offenders (b) unconvicted offenders (c) juvenile offenders, (d) female offenders, (e) offenders who are suffering from mental illness and (f) such other groups as the Commissioner-General may determine, and as far as the correctional facility accommodation renders it practical, each group must be detained separately. Sub-section (2) provides that the officer in charge must assign or cause to be assigned a security classification or re-classification to each offender in accordance with the conditions, manner and procedures as may be determined by the Commissioner-General. The Correctional Service Act, 2012 requires the assessment and admission unit to provide separate units for offenders/inmates according to their risk and needs, at all correctional facilities and the living conditions of these facilities comply with the Nelson Mandela Rules.

9. The NCS has developed a Health Policy that addresses all the health issues of the inmates including public health problems like Tuberculosis, HIV/AIDS, hepatitis and other infectious and contagious conditions. The Health Policy covers in detail the specific concerns of inmates that may not be found in the general public environment. The Health Policy also covers all aspects of health that are common in the public health system. In general, the NCS Health Policy advocates for equal health standards to be offered to the inmates as they would be given to the public. In other words, health professionals in correctional facilities should be of equal standing to those found in the State hospitals that cater for the public and the services that they should offer to the inmates should be like the one being offered to the general public in every respect, and this includes cases of public health concern including HIV/AIDS. The Correctional Service Act, 2012 and the NCS Health Policy also permits inmates who can afford private health care services to access those health services.

10. NCS also permits offenders to receive visitors, letters, food, clothing and other necessities as may be permitted and under strict examination for security purposes, from outside of the correctional facility. These privileges are aimed at promoting and maintaining a relationship between the offender, family and the community and facilitating the successful reintegration of the offender into the community as provided for in terms of section 77 of the Correctional Service Act, 2012. NCS provides gratuities for offenders as a way of encouraging them to participate in rehabilitation programmes as well as financial assistance to offenders to facilitate their reintegration into society. Offenders are provided with nutritious foods and special diets for those that suffers from ill health. Children below the age of two living with their mothers are provided with milk formula, disposable nappies as well as baby foods such as cereals, fruits and special diets to the nursing mothers that includes fruits and vegetables in addition to their daily meals.

11. Section 110 of the Correctional Service Act, 2012 makes provision for offenders/inmates to be released on day parole and section 111 of the Correctional Service Act, 2012 for temporary absences of offenders. Day parole allows offenders to leave the

correctional facility under supervision by correctional officers for short periods to work outside, attend school for training or examination.

12. In addition, the NCS has information sharing sessions at daily morning parades as a way of sensitizing correctional officers on security issues and treatment of offenders as postulated in the Correctional Service Act, 2012 and its regulations. The NCS ensures compliance with the Namibian Constitution by taking disciplinary actions against correctional officers that are committing disciplinary offences against offenders/inmates under section 50 of the Correctional Service Act, 2012.

Reply to paragraph 19 of the concluding observations

13. The Office of the Ombudsman is tasked with the mandate of impartially investigating all allegations of torture and ill treatment by state organs as well as private entities and individuals.

Reply to paragraph 21 of the concluding observations

14. The Caprivi High Treason trial ended in September 2015. About 30 accused persons were found guilty and sentenced to various terms of imprisonment and 79 were found not guilty and released from custody. Several of those found guilty are appealing their convictions in the Supreme Court and some of those acquitted are suing the State for malicious prosecution.

Reply to paragraph 23 of the concluding observations

15. As Stated in the previous report, all cases of torture are absolutely prohibited in Namibia. Article 8 of the Namibian Constitution proscribes all forms of torture and other cruel, inhuman treatment or punishment.

Reply to paragraph 27 of the concluding observations

16. The Namibian Government is committed to protecting the rights as well as promoting the welfare of refugees and migrants, however, the State party cannot repeal section 24(1) of the Refugee Recognition and Control Act, 1999. The said provision is crucial as it empowers the Minister to request the Commissioner in writing to order the detention or the expulsion from Namibia of any recognised refugee or protected person, 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.

Reply to paragraph 27 (b) of the concluding observations

17. The Ministry of Home Affairs and Immigration has conducted regional consultations on the 1969 OAU Convention Governing Specific Aspects of Refugees Problems in Africa, the 1954 UN Convention Relating to the Status of Stateless Persons and 1961 UN Conventions on the Reduction of Stateless Persons. During the said consultations, inputs from Namibia's geographical regions on whether to ratify the 2009 AU Convention on the Protection and Assistance of Internally Displaced Persons in Africa, or commonly known as the Kampala Convention were also sought.

18. The NWCS was established to study the necessity of ratifying the said treaties. To this effect, the draft NAPS was produced to serve as a guiding tool.

Reply to paragraph 27 (c) of the concluding observations

19. The assertion that a group of asylum seekers from eastern DRC were given exit notices is incorrect. The Commissioner for Refugees never issued the alleged exit notices to any refugee or asylum seekers being hosted by Namibia to date.

Reply to paragraph 27 (d) of the concluding observations

20. Namibian immigration laws do not discriminate against any person (national or foreign) based on sexual orientation. The criteria for granting asylum are gender neutral and do not discriminate against sexual minorities.

Reply to paragraph 27 (e) of the concluding observations

21. Although the offense of sodomy is still regarded as a common law crime in Namibia, there is no legal provision in Namibia's statutes that excludes a person convicted of sodomy from entering the country.

Reply to paragraph 29 of the concluding observations

22. The State party acknowledges that GBV and violence against children is a challenge in the country. However, the Government of the Republic of Namibia remains committed to implement laws aiming to address violence against women and girls. During the period under review, several pieces of legislation were enacted to address GBV in the country, the Witness Protection Act, 2017 (Act No. 11 of 2017); Child Care and Protection Act, 2015 (Act No. 3 of 2015) and the Combating of Trafficking in Persons Act, 2018 (Act No. 1 of 2018).

23. In addition to the above, existing laws such as the Combating of Rape Act, 2000 (Act No. 8 of 2000), the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) and the Labour Act, 2007 (Act No. 11 of 2007) are under review to ensure that Namibia continues to adopt and implement legal frameworks that prohibit and reduce violence against women and girls.

24. Furthermore, the Government has demonstrated its commitment to reduce GBV from 33% to 20% by the end of 2022 in the National Development Plan (NDP) 5 under the Social Progression pillar.

25. In order to identify and understand the root causes and consequences of violence against women and girls, the Ministry of Gender Equality and Child Welfare conducted a National GBV Baseline Study (Consolidating GBV Prevention Effort and fast-Tracking Namibia Response) in 2017. The main objective was to synthesize information on knowledge; attitudes and good practices to address GBV. The study revealed that most drivers of GBV were relationship factors that were deeply entrenched within socio-cultural norms and escalated to societal level factors. Several factors include unequal power social relations, alcohol abuse, early marriages, unemployment, family history et cetera. Recommendations from the study informed the development of the new GBV Plan of Action 2019–2023.

26. To mobilise communities to fight violence against women and girls, community support groups have been established in the Zambezi, Ohangwena and Omusati regions. The support groups have been effective in discussing issues related to GBV including negative cultural practices. Male engagement program has also been intensified and the training manual is available. A male engagement Training of Trainers workshop on the use of the Training Manual for Men and Boys (October 2018 :) was conducted. The overall aim was to enhance the knowledge and skills of the Regional Community Gender Liaison Officer, key MGECW staff, Civil Society and NGOs as well as Youth Organisations for the promotion of Sexual and Reproductive Health and Rights, prevention of the GBV, HIV & AIDS. Hence specific objectives were:

- To strengthen participant's understanding of the key concepts of GBV, SRHR and HIV/AIDS as relating to gender to issues within the context of men and masculinity;
- Introduce participants to the National Training manual and Training Plan for Men and Boys on GBV, SRH and HIV & AIDS;
- Strengthen facilitation skills based on the manual.

27. The Ministry engaged regions to discuss issues such as cohabitation; baby dumping and teenage pregnancy and other GBV issues through the establishment of Regional GBV clusters. Regional plan of actions to address these issues have been developed and implementation of these plans are reported on a quarterly basis to the MGECW.

28. Several cases of GBV have been decided by the courts in recent years. In the case of *S v Diergaardt*² the accused was convicted of murder read with the provisions of the

² (CC 12/2016) [2019] NAHCMD 454 (05 November 2019).

Combating of the Domestic Violence Act, 2003 (Act No. 8 of 2003). In this case, the court held that GBV is totally unacceptable and those found guilty will be severely punished because the interest of society far outweighs the personal circumstances of the accused. The accused was sentenced to thirty-five years imprisonment (35) of which five (5) years were suspended.

29. In another case of *S v Cloete*,³ the accused was charged with the crime of housebreaking with intent to murder and murder read with the provisions of the Combating of Domestic Violence Act, 2003. At the time of the incident the accused and the deceased were involved in an actual romantic relationship in that they had a child together. The court held that though it is mindful of the fact that the accused is a first offender, the crime committed is of such a serious nature and crimes of violence against women are on the rise country wide and the courts have a duty to pass sentences that have a retributive effect, and which will send a clear and unequivocal message to society that such behaviour cannot be tolerated or condoned. The accused was sentenced to 32 years imprisonment.

Reply to paragraph 31 of the concluding observations

30. Despite the conservative, religious and cultural beliefs of most Namibians, all Namibian citizens, and foreign nationals irrespective of their sexual orientation are protected under various laws of the land. Although sodomy is a common law offense, no member of the LGBTQI has ever been prosecuted because of their sexual orientation. Members of the LGBTQI community hold top positions in both the public and private sector. Gay friendly activities such as gay pride parades and Mr and Ms. Gay Namibia do take place annually in the country without any intimidation from state agents.

31. Moreover, sexual minority issues are currently being flagged by the sodomy project and under the obsolete law project of the law reform directorate of the Ministry of Justice. Namibia upholds the protection of all citizens irrespective of their sexual orientation. The Ombudsman office devised the National Human Rights Action Plan that was approved at cabinet. The sad plan is inclusive of LGBTI issues. The LGBTI community is also protected by Chapter 3, Article 10 of the Namibian Constitution.

Reply to paragraph 33 of the concluding observations

32. The Ministry of Gender Equality and Child Welfare conducts regular awareness campaigns to sensitize communities on harmful traditional practices. These tasks are mostly carried out by regional Gender Liaison Officers and the Ministry's social workers.

Reply to paragraph 35 of the concluding observations

33. It is not a State policy to subject women to forced or coerced sterilization, especially those with HIV/AIDS. The Ministry of Health and Social Services issued a Government Notice No. 73. Regulation 7 of the Notice deals with State Patients benefits and responsibilities. Regulation 7(1) and (a) and (c) and regulation 7 (1) (c) to (XII) were issued to reiterate the Ministry's position on informed consent.

Reply to paragraph 37 of the concluding observations

34. Corporal punishment is not permitted in Namibia. No organ of State is permitted to administer corporal punishment on any individual in the country. In the school setting, the Namibian Supreme Court ruled that corporal punishment in schools is a violation of children's constitutional right to human dignity.

35. Moreover, Namibia's Child Care and Protection Act, 2015 (Act No. 3 of 2015) is an important piece of legislation that protects and promotes children's rights and welfare in Namibia. It prohibits corporal punishment in many settings: residential childcare facilities, foster care, places of care, shelters, early childhood development centres, public and private schools, prison, police cells or any alternative care which results from a court order. Suffice to say, the Minister of Gender Equality and Child Welfare also has a duty in terms of the

³ (CC 01/2015) NAHCMD 10 (30 January 2018).

Child Care and Protection Act, 2015 to provide education and awareness raising programmes on the rules on corporal punishment and to promote alternative forms of discipline which have a more positive impact on children in all regions of Namibia.

36. Furthermore, the Basic Education Act, 2020 (Act No. 3 of 2020) proscribes all forms of corporal punishment in both public and private schools. In the case of *Van Zyl v The State*⁴ it was Stated that no parent or learner can overrule the prohibition by giving “consent” to corporal punishment.

37. To further buttress the case against corporal punishment, section 132 of the Child Care and Protection Act read together with Section 131 provide that there should be mandatory reporting by all persons who have a “reasonable belief” that a child “may need protection”. This requirement supersedes all rules about professional confidentiality except for confidential discussions between lawyers and their clients.

Reply to paragraph 39 of the concluding observations

38. Men and women selling sexual services are accorded protection from violence and other forms of abuse. The Combating of Rape Act, 2000 (Act No. 8 of 2000) can be invoked in cases where sex workers have been raped by their clients.

Reply to paragraph 41 of the concluding observations

39. The State party has undertaken measures to combat all forms of human trafficking. In 2018 the Trafficking in Persons Act, 2018 (Act No. 1 of 2018) was enacted. In addition, the anti-trafficking Act, two other pieces of legislation that can supplement Government’s efforts in combating human trafficking were passed. These are the Witness Protection Act, 2017 (Act No 11 of 2017) and the Whistle-blower Protection Act, 2017 (Act No. 10 of 2017).

40. The State party further established a High-Level Committee chaired by the Deputy Prime Minister and Minister of International Relations and Cooperation to coordinate issues related to trafficking in person in the country. Members of the committee are Ministers of Gender Equality and Child Welfare, Safety and Security, Justice, Home Affairs, Works and Transport, Offices of the Prosecutor-General and the Attorney-General.

41. In order to effectively assist victims of TIP, an NRM and SOPs have been developed to enable State actors and civil society to fulfil their obligation to protect and promote the human trafficking victims by coordinating efforts in a strategic partnership. The implementation of the NRM and SOPs is coordinated by the Ministry of Gender Equality and Child Welfare through the IMC and the National Coordinating Body (which consists of Government and non-Governmental actors as members). A national awareness campaign for TIP was also launched on the 29th of March 2019 to create awareness under the theme “Beware Namibians. Human Trafficking is Real”. The communication material of this campaign included billboards (erected in 3 towns, Oshikango, Windhoek, and Katima Mulilo) pamphlets of basic knowledge of TIP, radio drama series, posters, pens, media engagement platforms and a song composed specifically to warn the young against TIP. The campaign cost N\$ 1.2 million.

Table 1: Trafficking in persons cases 2014–2019

<i>Reported</i>	<i>Finalised</i>	<i>Under investigation</i>	<i>At court pending trial</i>
40	6	15	19
	Conviction—2		
	Not guilty—0		
	PG declined to prosecute—4		

Source: Namibian Police Force.

⁴ (CA 25-2014) [2016] NAHCMD 246 (05 September 2016).

Reply to paragraph 43 of the concluding observations

42. In 2019, the Ministry of Justice agreed in principle with the Regional Office for Southern Africa (ROSA) of OHCHR ROSA for the latter to assist the former with technical and financial assistance to implement the national recommendation tracking database as part of its obligations under various human rights mechanisms. This project was earmarked for 2020, but due to the Covid-19 pandemic, it was shifted to 2021.

Reply to paragraph 45 of the concluding observations

43. The State party continues to train members of the armed forces and police on human rights including courses on GBV. During 2014–2016, 21 magistrates were trained on GBV, the objective of the training was to instil knowledge on the procedure and law contained in the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) to ensure that the presiding officers are informed on the granting of protection orders and the adjudication of GBV disputes in their courts. During October 2016 the Magistrates Commission provided training to social workers who were on a gender-based violence workshop in Swakopmund.

44. During 2015, a Training Manual for Police Officers on the Prevention of Torture was developed and used in the training of police officers concerning the prohibition of torture. The Namibian Police have a GBV Division which consists of highly trained members who lead investigations into sexual, GBV and domestic violence related crimes. During 2014 five (5) members were trained in Republic of Botswana, Gaborone on Sex crimes and crime scene investigations at the ILEA. In 2016 seven (7) members were trained at a similar academy in Budapest, Hungary.

Reply to paragraph 48 of the concluding observations

45. The State party takes note of this recommendation.

Reply to paragraph 49 of the concluding observations

46. The State party takes note of this recommendation.

Reply to paragraph 50 of the concluding observations

47. The State party takes note of this recommendation.

Part II

Specific Information on new Measures and new Developments in terms of the implementation of Articles of the Convention

Article 1

Definition of Torture

48. The State Party wishes to inform the Committee that there is a draft Prevention of Combating Torture Bill. The meaning of torture in the Prevention of Combating Torture Bill corresponds with the definition of torture proffered in article 1 of the UNCAT. This Bill is currently under review by the Ministry of Justice to address some of concerns raised in the National Assembly concerning, amongst others, the appropriate penalties for torture, before it can re-tabled in Parliament during 2021.

Article 2

Effective Legislative, Administrative, Judicial or other Measures to Prevent acts of Torture

49. In an effort to combat all forms of terrorism and in line with Namibia's international obligations, the State party enacted the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014) as terrorism and its associated acts prevent citizens from enjoying their human rights and freedoms.

50. The aims of the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 are to provide for the offences of terrorism and proliferation and other offences connected or associated with terrorist or proliferation activities; to provide for measures to prevent and combat terrorist and proliferation activities; to provide for measures to give effect to the international conventions, Security Council Resolutions, instruments and best practices concerning measures to combat terrorist and proliferation activities; to provide for measures to prevent and combat the funding of terrorist and proliferation activities; to provide for investigative measures concerning terrorist and proliferation activities; to provide for measures to proscribe persons and organisations that conduct terrorist and proliferation activities; and to provide for the incidental matters thereto.

51. The State party also enacted the Combating of Trafficking in Persons Act, 2018 (Act No. 1 of 2018). The purpose of the Combating of Trafficking in Persons Act, 2014 is to give effect to the United Nations Protocol to prevent, suppress and punish the trafficking of persons, especially of women and children; to criminalise trafficking in persons and related offences; to protect and assist victims of trafficking in persons, especially women and children; to provide for the coordinated implementation and administration of this Act; and to provide for incidental matters.

52. In addition to the above, the State party also enacted the Whistleblower Protection Act, 2017 (Act No. 10 of 2017) which is in line with Namibia's international obligations. The Whistleblower Protection Act, 2017 affords protection to whistleblowers protection and once it is operationalized, it is expected to curtail acts of corruption and assist Government in enhancing human rights protection of its citizens, whether in the public or private sectors. Another important piece of legislation enacted by the Namibian Government to prevent acts of torture includes the Witness Protection Act, 2017 (Act No. 11 of 2017). The Witness Protection Act, 2017 provides for the protection and assistance to those who have witnessed crimes and are providing evidence to the authorities. It further provides for the establishment of a Witness Protection Advisory Committee, protection programme and fund. These laws will greatly aid authorities in combating cases of human trafficking and smuggling as well as any other human rights violations.

53. Lastly, the State party also drafted the Prevention of Combating Torture Bill which aims to combat all forms of torture. The meaning of torture in the Prevention of Combating Torture Bill corresponds with the definition of torture proffered in article 1 of the UNCA). This Bill was tabled before the National Assembly during 2019 and is currently under review by the Ministry of Justice to address some of concerns raised in the National Assembly concerning, amongst others, the appropriate penalties for torture, before it can re-tabled in Parliament during 2021.

Article 3

Extradition to another State that practices Torture

54. The State Party performs extraditions in line with the Extradition Act, 1996 (Act No. 11 of 1996) and expels persons in line with the Immigration Control Act, 1993 (Act No. 7 of 1993). Namibia is also party to the SADC Protocol on Extradition. Namibia has never expelled or extradited any person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

55. Below are statistics on extraditions to and from Namibia in the last five years. None of these extraditions violated article 3 of the Convention Against Torture on non-refoulement.

Extradition requests from 2014–2019

<i>Countries</i>	<i>Requests from Namibia to other countries</i>					
	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
South Africa	1	1	1	2		1
Botswana				1		
Zimbabwe					1	1
Angola						1

<i>Countries</i>	<i>Requests from other countries to Namibia</i>					
	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
South Africa	1			1	4	1
Germany	1					
Botswana	1		2			4
Zimbabwe		1				
USA			1			
Czech Republic					1	

Articles 4, 5, 6, 7, 8 and 9

Acts of Torture as Offences under Criminal Law, Refoulement, Extradition, Jurisdiction and Expulsion

56. As previously stated above in this report, the State party has drafted the Prevention of Combating Torture Bill to give effect to Namibia's obligations under the CAT and to criminalise offences of torture and other forms of cruel, inhuman and degrading treatment. This Bill is currently under review by the Ministry of Justice to address some of concerns raised in the National Assembly concerning, amongst others, the appropriate penalties for torture, before it can re-tabled in Parliament during 2021.

57. In addition to the above, the judiciary penalizes acts of torture in terms of article 8, as read with article 25(2) of the Namibian Constitution, which empowers aggrieved persons to approach a competent Court to enforce or protect fundamental rights and freedoms guaranteed by the Constitution. However, currently, all acts of torture or cruel, inhuman or degrading treatment or punishment are considered common-law offences and the courts have a discretion to sentence a person convicted of torture to a term of imprisonment or a fine.

58. Article 8 of the Namibian Constitution prohibits all forms of torture, cruel and degrading and inhuman treatment or punishment, which includes corporal punishment. The Basic Education Act, 2020 (Act No. 3 of 2020) prohibits all forms of corporal punishment in any school environment. The Child Care Protection Act, 2015 (Act No. 3 of 2015) also prohibits corporal punishment in the home setting.

Article 10

Education and Information on Torture

59. Training on the prevention of torture is continuously provided to members of the NDF and NAMPOL. The LAC has on numerous occasions provided such training to members of the said institutions.

60. In 2015, the Office of the Ombudsman compiled an anti-torture manual entitled "Prevention of Torture Training Manual for Police Officers". The objectives of the said manual are:

- To provide trainees with an overview as to how the concept of torture prevention arose;
- To explain the principles of Human Rights as the basis to prevent torture;
- To provide trainees with an overview of the prevention of torture principles under the Namibian Human rights Context.

61. Furthermore, the Office of the Ombudsman has a running prevention of torture project for police officers. This project developed a "Prevention of Torture Training Manual for Police Officers." Some Staff members in the Ombudsman participated in the torture prevention training offered by the APT and the NANHRI.

62. Training workshops for police officers have been in nine (9) of the fourteen (14) regions of the country and a multi-media public awareness campaign comprising of billboards, adverts on television and three (3) different 30 seconds scripts were read live in all local languages on all stations of NBC Radio.

63. Human rights related subjects are taught at both primary and secondary schools. Social Studies is a subject taught at primary school and it is aimed at imparting knowledge on human rights, democracy and rule of law.

64. The Ministry of Gender Equality and Child Welfare regularly conducts human rights seminars as well as training to traditional authorities and members of the public, especially rural dwellers on women and children's rights as covered under the constitution and various international human rights instruments.

65. Institutions of higher learning, such as the UNAM and the NUST offers human rights related subjects and short courses. The subject Contemporary Social Issues is offered by these institutions and is compulsory for all first-year students at the undergraduate level of studies. Moreover, the Law Faculty of the University of Namibia houses the Human Rights Documentation Centre whose function is to disseminate human rights related materials/information to students and members of the public.

Article 11

Interrogation Rules, Instructions, Methods, and Practices and Detention Procedures

66. Interrogation rules followed by members of the police force are in line with both the Namibian Constitution and the Criminal Procedure Act, 1977 (Act No. 51 of 1977). In relation to detention, the NCS provides separate sections for trial awaiting from sentenced inmates at all correctional facilities and these facilities comply with the Nelson Mandela Rules. The NCS adopted the Offender Risk Management Correctional Strategy (ORMCS) as the philosophy to guide the management and rehabilitation of offenders. However, the implementation of this strategy requires appropriate infrastructure, meaning that extensive changes and renovations must be affected to existing correctional facilities to tailor them to the needs of rehabilitation.

67. As part of the ORMCS, the NCS constructed a Female Correctional Centre at Windhoek Correctional Facility, which was recently completed and started operating in October 2019. The Female Correctional Centre has a separate section for trial awaiting inmates which has both communal cells and single cells. As a newly built facility, the Female Correctional Centre provides facilities such programmes areas, a playground for young children. Further, the male section of awaiting trial at Windhoek Correctional Facility is undergoing renovations to improve the living conditions and most of the cells has been completed with only two cells still to be renovated.

68. The organizational structure of the NCS makes provisions for the constructions of Remand Facilities that will accommodate trial awaiting inmates. These Remands will be located at Rundu, Ondangwa, Grootfontein, Windhoek, Walvisbay, Keetmanshoop and Outapi. The NCS started with the constructions of a new correctional facility at Ondangwa and the current Oluno Correctional Facility will be converted into a Remand Facility. However due to financial constraints, the constructions of this new facility and all the Remand Facilities is put on hold.

Article 12

Impartial Investigations in cases of Torture

69. The Office of the Ombudsman continues to investigate cases of torture by both organs of State and private individuals and entities in a transparent and impartial manner. Moreover, the IID unit in the Namibian Police after conducting a thorough investigation in relation to cases of police misconduct recently sacked 56 members from the force, while 41 others are currently on suspension pending the finalisation of their cases in the courts for various offences, including assault of members of the public. This is a clear indication that the Government does not condone acts of torture by its police officials.

Article 13

The Right to Complain against acts of Torture and the Protection of Witnesses

70. The Namibian legal system affords all its citizens and non-citizens the right to complain against any acts of torture. This can be done either by approaching the courts of law or by reporting cases of this nature to the Office of the Ombudsman.

71. In 2018 and in line with Namibia's international obligations, Government passed the Witness Protection and the Whistleblower Protection Act, 2017 (Act No. 10 of 2017). The Witness Protection Act, 2017 (Act No. 11 of 2017) on the other hand, provides for the protection and assistance to those who have witnessed crimes and are providing evidence to the authorities. The Act further provides for the establishment of a Witness Protection Advisory Committee, a protection programme. These laws will greatly aid authorities in combating cases of human trafficking and smuggling as well as any other human rights violations.

72. Whilst the Whistleblower Protection Act, 2017 (Act No. 10 of 2017) affords whistleblowers protection under the law. The Whistleblower Protection Act, 2017 is expected to curtail acts of torture among other things and assist Government in enhancing human rights protection of its citizens.

Article 14

Complaints against Torture, Redress and Compensation

73. Any victim of torture can seek redress and compensation through legal means. The LAC, a public interest law group regularly institutes lawsuits against the State for human rights violations including torture cases.

74. A total of 167 civil claims relating to unlawful arrest and detention were brought against the Government. Nine (9) of these claims were successful and resulted in the victims being compensated with different amounts of money. The breakdown of the aforesaid claims per financial year is as follow:

2015

<i>Number of civil claims reported</i>	<i>Number of successful claims in which the victims were compensated</i>
49	6

2016

<i>Number of civil claims reported</i>	<i>Number of successful claims in which the victims were compensated</i>
25	2

2017

<i>Number of civil claims reported</i>	<i>Number of successful claims in which the victims were compensated</i>
28	1

2018

<i>Number of civil claims reported</i>	<i>Number of successful claims in which the victims were compensated</i>
27	0

2019

<i>Number of civil claims reported</i>	<i>Number of successful claims in which the victims were compensated</i>
38 to date	0

75. As reported in the previously, there is no specific law that deals with the right to rehabilitation for victims of torture in Namibia, however civil claims and compensation for damages sought by a victim of torture are instituted in the Lower and High Courts in terms of their respective legislation on civil procedure and any victim can approach any Government health facility to seek treatment.

Article 15

Inadmissibility of Statements obtained by torture

76. As Stated in the last report, statements made as a result of torture are inadmissible in any court of law. This view has been echoed in several court cases. In the case of *S v. Khaxab*⁵ it was held that:

77. For the admissions to be admitted in evidence, they should satisfy the requirements of section 219A of the Criminal Procedure Act 51 of 1977. The Court must be satisfied that the Statement had been made freely and voluntarily and without undue influence. Furthermore, the Court must be satisfied that accused had been properly advised of his rights to legal representation which includes the right to apply for legal aid. The Court must be further satisfied that the accused made the admissions whilst he was in his sound and sober senses.”

Article 16

Preventing acts of cruel, inhuman or degrading treatment or punishment

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

⁵ *S v Khaxab* (CC 02/2015)[2017] NAHCMD 7 (17 January 2016).