



## REPUBLIC OF NAMIBIA

---

### EMBASSY/ PERMANENT MISSION OF THE REPUBLIC OF NAMIBIA

---

Tel: + 41 22 733 02 20  
Fax: + 41 22 734 49 07  
Email: [info@missionofnamibia.ch](mailto:info@missionofnamibia.ch)  
Website: [www.missionofnamibia.ch](http://www.missionofnamibia.ch)

Allée David Morse, 8  
CH -1202, Geneva  
Switzerland

Ref: 2/2

The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva, and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit herewith **Namibia's response to the call for input dated 2 November 2022 by the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment.**

The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the OHCHR the assurance of its highest consideration.

**Office of the High Commissioner for Human Rights  
GENEVA**







**REPUBLIC OF NAMIBIA**  
**MINISTRY OF JUSTICE**

**Information submitted to Special Rapporteur on Torture for the thematic report: “The duty to investigate crimes of torture in national law and practice”**

**1. Challenges, impediments and obstacles to effective national investigations and prosecution of acts of torture**

1.1 The office of the Ombudsman is mandated by the Ombudsman Act 1990, (Act No. 7 of 1990), to carry out investigations of torture. 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 Internal Investigation Directorate Unit (hereinafter referred to as IID) 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. However, the Act does not confer upon the Ombudsman’s office the powers of arrest and detention.

1.2 The absence of substantial legislation poses a challenge as the definition of torture is not found in domestic legislation. Additionally, there are no specific investigation provisions on torture, redress for victims and the necessary support for victims of torture amongst others. These concerns are addressed in the draft anti-torture legislation that is to be re-tabled before Parliament.

**2. Regulatory framework**

2.1 Article 8(2)(b) of the Namibian Constitution prohibits torture or cruel, inhuman or degrading treatment or punishment against any person. In the absence of a specific law criminalizing torture (and other forms of cruel,

inhuman or degrading treatment or punishment as applicable), perpetrators of this offence are charged and prosecuted under the common law offences of Assault with intent to do Grievous Bodily Harm and/or attempted murder. Similarly, these offences are listed as serious offences under **schedule I of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)** and under other legal frameworks such as;

- a) **section 2 of the Combating of Rape Act, 2000 (Act No. 8 of 2000);**
- b) **section 2 of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003);**
- c) **Section 228 (1) of the Child Care and Protection Act, 2015 (Act No.3 of 2015);**
- d) **The Combatting of Traffic in Persons Act, 2018 (Act No. 1 of 2018);**
- e) **The Labour Act, 2007 (Act No. 11 of 2007)**
- f) **Section 56 (1) of the Basic Education Act 2020 (Act No. 3 of 2020);**  
and
- g) **The Married Person Equality Act, 1996 (Act No.1 of 1996).**

2.2 The Supreme Court of Namibia in 1991 declared corporal punishment unconstitutional in *Ex Parte Attorney General In re Corporal Punishment case*, as it contravenes Article 8 right to respect for inherent dignity. **Section 56 (1) of the Education Act** makes it a criminal offence for a teacher or other employee at schools or hostels, both in government and private schools, to impose or administer corporal punishment. **Section 228 (1) of the Child Care and Protection Act, (Act No. 3 of 2015)** expressly outlaws corporal punishment in the homes, which means that parents and guardians or any person who is in control of a child must respect the child's constitutional right to dignity. More importantly Article 144 of the Namibian Constitution of the Republic of Namibia, makes provision for international agreements binding upon Namibia to form part of the laws of the Republic of Namibia. Equally Namibians can have recourse in our courts using the United Nations Convention Against Torture.

2.3 Despite not having anti-torture legislation, in its effort to prevent torture, in 2015 the Ombudsman, with the approval of the Inspector General of the Namibian Police Force, compiled an anti-torture manual entitled "Prevention of Torture 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.

2.4 These trainings took place during the years 2015 to 2018, with anticipated follow up trainings for the newly appointed police cadets to take place by the end of 2022.

### 3. Elements of human rights-compliant investigations and prosecution:

3.1 **Section 18 of the Police Act, 1990 (Act No. 19 of 1990)** provides that Police officials may be investigated for misconduct, human right violations, inclusive of torture, under their Internal Investigation Directorate (**IID**). Officials found guilty for acting outside the scope of their duties are subject to relevant laws, including arraignment before a competent court. In the Republic of Namibia, the State is represented by the Prosecutor-General in criminal cases and is *dominus litus*. Therefore, the prosecution of all allegations of torture lies with the State, to ensure independent and impartial access to justice as guaranteed by **Article 25 of the Namibian Constitution**.

3.2 Remedies for victims and survivors of torture, includes restitution and compensation under civil claims as per the Magistrates Rules and the High Court Rules of the Republic of Namibia. **Similarly, Section 50 (b) (ii – iv) of the Correctional Services Act, 2012 (Act No. 9 of 2012)** allows for disciplinary action to be taken against of correctional officers who are alleged to have committed human right violations, inclusive of torture of offenders.

### 4. Mechanism/institutions/entities in complaints, investigations and prosecutions:

4.1 The office of the Ombudsman, the Office of the Inspector General of the Namibian Police and the Office of the Prosecutor General are tasked to impartially investigate and prosecute all allegations of torture and ill treatment by state organs as well as private entities and all individuals, to ensure that victims of human rights violation are protected and offenders are brought to justice.

4.2 When a complaint is laid by a victim of torture, he or she is advised by the police to open a criminal case under the common law offences of assault GBH and/or attempted murder, a case docket will then be opened and the matter will be referred to a competent investigating officer for further investigations and for possible prosecution of the offender. In cases of police brutality, the case upon the recommendation of the Ombudsman is referred to the Office of the Inspector General of the Namibian Police for further investigations and possible prosecution of that member or members before a competent court.

4.3 Article 25 of the Namibian Constitution guarantees the enforcement of fundamental Rights and Freedoms, which entails the right to adequate, effective, open and transparent access to justice. The Namibian courts operate under the auspices of the principle of the rule of law, in affording every individual the right to be heard and to have that right enforced, where an alleged violation has taken place, which may be criminal or civil in nature. Notably the Ministry of Justice: Directorate of Legal Aid, makes provision for legal aid to indigent persons to enable them bring their cases to court.

## **5. Victim Participation and Protection:**

5.1 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 the Magistrates Courts Act, 1944 (Act No. 32 of 1994) as amended by the Magistrates Court Act, 2003 (Act No. 3 of 2003), the High Court Act, 1990 (Act No. 16 of 1990) and any victim can approach any Government health facility to seek treatment.

5.2 The Republic of Namibia in its efforts to secure victim participation in proceedings involving allegations of torture, officially opened the renovated victim friendly court for gender-based violence (GBV) at the Windhoek Magistrates. This courtroom facility is an example of institutional mechanism designed to eradicate GBV, protect victims and specifically ease the burden on for victims testifying in court in such a way that the victims are kept-physically separate from their abusers to enable them to freely and openly testifying without intimidation and without causing unnecessary secondary trauma.

5.3 To provide effective comprehensive services to victims of sexual and gender-based violence, the Government established 17 Gender Based Violence Protection Units (GBVPU), in 14 regions. The units adopt a multi sectoral approach and the key ministries involved are:

- Gender Equality and Child Welfare responsible for psycho-social support services;
- Safety and Security responsible for Protection Services; and
- Health and Social Services responsible for care and treatment services.

5.4 The Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003), makes provision for complainants to apply for protection orders in cases of violence, harassment and threats of violence, including domestic violence. Protection order may be sought at the same time criminal charges are laid. Protection can also be obtained through the measures of civil-law procedures. In this instance, the complainant obtains an interdict, a court order directing a perpetrator to stop a particular behaviour. Furthermore, Media Houses and Police officials are also banned from divulging the names of complainants. The purpose of this ban is to protect the privacy and identity of those in need of protection.

## **6. Complex investigations:**

In matters concerning extradition and mutual legal assistance, both domestic and international investigations, government relies on the provisions of the Extradition Act, (Act No. 11 of 1996) and/or provisions of the International Cooperation in Criminal Matters Act 2000, (Act No. 9 of 2000) as amended. In conformity with the principle of non-refoulement, and its obligations under Article 3 of the United Nations Convention Against Torture, Namibia has not expelled or extradited any person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In line with Article 5 - 8 of the United Nations Convention Against Torture, Namibia has committed to extradite persons accused of committing torture in another country.

## **7. Evidence collection and innovation:**

The Prevention and Combating of Torture Bill makes provision for the training and education of relevant authorities, such as law enforcement officials, civil and military personnel and others tasked with the investigations and prosecution of torture and

other prohibited ill treatment in alignment with the *Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Punishment*. Currently, the Training Manual for Police Officers on the prevention of Torture that was developed by the Office of the Ombudsman provides trainees with an overview of the prevention of torture principles under the Namibian Human rights context and the broad purpose of investigations in line with the *Istanbul Protocol*, in order to establish the facts relating to alleged incidents of torture, with a view to identifying those responsible for the incidents and facilitating their prosecution, or for use in the context of other procedures designed to obtain redress for victims.

**End.**