

NAMIBIA

CAT A/52/44 (1997)

227. The Committee considered the initial report of Namibia (CAT/C/28/Add.2) at its 293rd and 294th meetings, on 6 May 1997 (CAT/C/SR.293 and 294/Add.1), and adopted the following conclusions and recommendations.

1. Introduction

228. The Committee thanks the State party for submitting the initial report and for its responses to the questions and concerns expressed by the Committee.

2. Positive aspects

229. The Committee welcomes the goodwill shown by Namibia in its accession to the Convention against Torture and other instruments of international human rights and humanitarian law.

230. The Committee welcomes the Government's growing awareness of the importance of human rights, as demonstrated by the fact that the Government now permits non-governmental organizations and diplomatic officers regular access to prisons and prisoners and that local non-governmental organizations operate freely, dealing openly with a variety of human rights issues.

231. The Committee expresses its satisfaction with the explicit proclamation in the Namibian Constitution that no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment and that testimony obtained under torture is not admissible as evidence in a Namibian court of law.

232. The Committee welcomes the improvement in Namibia's asylum and refugee policy according to which asylum seekers from other African countries are permitted to enter the country and are granted refugee status.

3. Factors and difficulties impeding the application of the provisions of the Convention

233. The Committee is aware that Namibia, which only became an independent State in 1990, is confronted with the legacy of the pre-independence period which hinders desirable efforts to fully harmonize the Namibian legal order with the requirements of international humanitarian law instruments.

234. The Committee has tried to take this fact into consideration in formulating its conclusions and recommendations. However, it must be emphasized that no exceptional circumstances can ever provide a justification for failure to comply with certain terms of the Convention against Torture.

4. Subjects of concern

235. The Committee is concerned that Namibia has not integrated, as required by articles 2 (1) and 4 (1) of the Convention, the specific definition of the crime of torture into its penal legislation in terms legally consistent with the definition contained in article 1 of the Convention. In the absence of a strict legal definition of torture and other offences and of a precise description of appropriate and corresponding punishment for torture and other offences, it is impossible for the Namibian courts to adhere to the principle of legality (nullum crimen, nulla poena sine lege previa) and to article 4 of the Convention.

236. The Committee is also concerned about the alleged cases of torture referred to specifically during the discussion of the State party's report.

237. The Committee deeply regrets that in many cases, because of the lack of judicial personnel, pre-trial detention extends for up to one year.

238. The Committee is concerned that although torture and physical assaults by the Namibian police have been reduced considerably since independence, treatment which falls under the category of torture or cruel, inhuman or degrading treatment or punishment still occurs in certain areas of the country.

239. The Committee is also concerned at the State party's failure in many cases to promptly and impartially investigate and prosecute those responsible for past and present acts of torture or cruel, inhuman or degrading treatment. Namibia also fails to institute consistently disciplinary proceedings against public officials responsible for acts of torture or ill-treatment.

240. The Committee expresses concern that there are no legal instruments to deal specifically with compensating victims of torture or other ill-treatment. The existing procedures for obtaining redress, compensation and rehabilitation seem to be inadequate and in many cases ineffective. Moreover, they limit the right to redress and compensation to the victim of torture, failing to give, in accordance with article 14 (1) of the Convention, the same standing to the deceased victim's dependants.

5. Recommendations

241. Namibia should enact a law defining the crime of torture in terms of article 1 of the Convention and should legally integrate this definition into the Namibian substantive and procedural criminal law system, taking especially into account: (a) the need to define torture as a specific offence committed by or at the instigation of or with the consent of a public official (delictum proprium) with the special intent to extract a confession or other information, to arbitrarily punish, to intimidate, to coerce or to discriminate; (b) the need to legislate for complicity in torture and attempts to commit torture as equally punishable; (c) the need to exclude the legal applicability of all justification in cases of torture; (d) the need to exclude procedurally all evidence obtained by torture in criminal and all other proceedings except in proceedings against the perpetrator of torture himself; and (e) the need to legislate for and enforce prompt and impartial investigation into any substantiated allegations of torture.

242. Namibia should enact laws, particularly prohibiting torture, as required under the Convention against Torture and other human rights agreements binding on Namibia, in fields that are not yet regulated. Existing national laws should be further reviewed in the light of the Convention and protection of human rights in general.

243. 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.

244. Independent governmental bodies consisting of persons of high moral standing should be appointed to take over the inspection of detention centres and places of imprisonment. The Government should also establish an independent authority to deal with complaints against members of the Police Department.

245. The Government should introduce measures to reduce the accumulation of criminal cases resulting in long and illegal pre-trial detention, which violates the right of defendants to be tried within a reasonable time.

246. The Government should provide the Office of the Ombudsman with the personnel and financial means to exercise its functions in the field of protection of human rights, as foreseen by the Namibian Constitution.

247. The Committee recommends that the specific allegations of ill-treatment which have been brought to its attention be investigated and that the results of such investigations be transmitted to the Committee. The Committee also recommends that the cases of disappearance of former members of the South West Africa People's Organization (SWAPO) be, according to article 12 of the Convention, promptly and impartially investigated. In all situations where reasonable grounds exist to believe that those disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependants of the deceased victims should, according to article 14 of the Convention, be afforded fair and adequate compensation. The perpetrators of those acts should be brought to justice.

248. Traditional leaders in community courts in Namibia should either be effectively made to comply with the legal limits of their power to order pre-trial detainment of suspects or they should be stripped of their power to order such pre-trial detention.

249. The Namibian authorities should 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.

250. The Committee recommends the prompt abolition of corporal punishment insofar as it is legally still possible under the Prisons Act of 1959 and the Criminal Procedure Act of 1977.

251. The Committee recommends that victims of torture in Namibia be given standing to institute, apart from civil action for damages, criminal procedures against the perpetrators of torture.

252. In view of the normal separation of disciplinary proceedings from criminal procedure, the Committee considers the legal dependence in Namibia of disciplinary proceedings against the perpetrator of torture upon the outcome of criminal proceedings as unnecessary.