



**MINISTERIAL STATEMENT**

**ON THE**

**PREVENTION AND COMBATING OF TORTURE BILL**

**IN THE NATIONAL ASSEMBLY**

**BY**

**THE MINISTER OF JUSTICE**

**HON. MR. SAKEUS E.T. SHANGHALA, MP**

**September 17, 2019**

**– To be checked against delivery –**

**Mister Speaker,**

1. This afternoon I rise to table the Prevention and Combating of Torture Bill.
2. The purpose of the Bill as captured in its long title is to give effect to the obligations of Namibia as a State Party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and to define the offences of torture and other forms of cruel, inhuman and degrading treatment.
3. Namibia acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 28 November 1994 and the Convention became binding on Namibia a month later on 28 December 1994. The Convention requires states to take effective measures to prevent torture within their borders (including criminalizing torture), and forbids states to transport people to any country where there is reason to believe they will be tortured.
4. In order to understand the proposed application of the Bill it is essential to understand the terms used in the Bill. Allow me a moment to clarify specific words, before I elaborate on the content and function of the Bill.
5. First I must highlight the difference between the terms ‘inhuman’ and ‘inhumane’. Generally, the term ‘inhumane’ is widely used and accepted, and many are familiar with its meaning, ‘inhuman’ is less popular. **‘Inhuman’**—like **‘inhumane’**—means pitiless **or** lacking in compassion, but **inhuman**, also means cruel, monstrous, **and** barbaric, and is evidently more aggressive in its meaning in comparison to **inhumane**. The Oxford English Dictionary defines **inhumane** as "destitute of compassion for misery **or** suffering in men **or** animals." Inhuman behaviour is incomprehensible to humankind, it is treatment or conduct that so far removed from the behaviour of humanity and it is absolutely prohibited.
6. The key term that hopefully warrants no lengthy explanation is torture, it is the object of the Bill and its definition is provided for under clause 2 of the Bill. “Torture” means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for –
  - (a) the purposes of obtaining from that person or a third person information or a confession;
  - (b) the purposes of punishing that person for an act he or she or a third person has committed or is suspected of having committed;
  - (c) the purposes of intimidating or coercing that person or a third person to perform an act; or
  - (d) any reason based on discrimination of any kind,

**by a public official** or a person acting at the instigation, **or with the consent, of a public official.**

7. From this definition, Honourable Members, you will notice that this Act does not apply to members of the public, but rather only to officials such as those officials employed by the Ministry of Home Affairs and Immigration and the Ministry of Safety and Security for example. Members of the public are excluded because any action which amounts to torture between ordinary citizens is catered for under separate legislation and general criminal law such as the legal framework on domestic violence and assault – assault with intent to do grievous bodily harm which are being seen as a form of torture in worldwide trends. Namibia therefore has separate legislation and a sufficient legal framework to deal with conduct that may amount to ‘torture’ between ordinary citizens, what is missing is a legal framework aimed at addressing this type of conduct when public authority is involved.

**Mister Speaker,**

8. This Bill will apply to public officials, but the reference to pain or suffering in the definition of torture does not include pain or suffering arising only from **lawful sanctions** such as lawful arrest. Officials are specifically trained in the prevention of torture through the prevention of torture training manual for Police Officers released by the Ombudsman in 2016.
9. To ensure that lawful arrests and similar official actions are executed with minimal force and with a focus on human rights the act of torture is very clearly defined in the Bill.
10. A public official who -
  - (a) tortures another person;
  - (b) orders the torture of another person; or
  - (c) knowingly permits or tolerates the torture of another person by a person under his or her command or by a person reporting to him or her, commits an offence and is on conviction liable to **imprisonment for life**. An official who is convicted of treating someone in a cruel or even degrading manner will be liable to a fine not exceeding 15 000 Namibia Dollars (N\$ 15 000).
11. These harsh sanction stem from the inherent right to dignity protected by Article 8 of the Namibian Constitution. Article 8(1) confirms that the dignity of all persons

shall be inviolable and 8(2)(a) ensures that respect for human dignity shall be guaranteed in any judicial proceedings, amongst others.<sup>1</sup>

12. With this Bill Namibia will significantly improve its international status as a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2010 during the cyclical country review the Committee Against Torture requested Namibia to provide detailed information on the measures taken by Namibia to enact a law making torture a specific statutory crime in the terms of article 1 and 4, paragraph 1, of the Convention and punishable by appropriate penalties which take into account its grave nature as provided in article 4, paragraph 2.<sup>2</sup> This Bill will allow Namibia to proudly report to the Committee next year and gain international credit for the comprehensive work done to meet the requirements of the Convention.
13. I therefore urge this August House to support this Bill for the promotion of human dignity and furtherance of Namibia's sterling international reputation.

So submitted.

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<sup>1</sup>Article 8 of The Namibian Constitution  
Respect for Human Dignity

(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 or punishment.

<sup>2</sup> UN Committee Against Torture (CAT), *List of issues prior to the submission of the second periodic report of Namibia (CAT/C/NAM/2)*, 10 January 2010, CAT/C/NAM/Q/2, available at: <https://www.refworld.org/docid/584964d14.html> [accessed 12 September 2019].