

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**PREVENTION AND COMBATING  
OF TORTURE BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Justice)*

## BILL

**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; to define the offences of torture and other forms of cruel, inhuman or degrading treatment and to provide for matters incidental thereto.**

### ARRANGEMENT OF SECTIONS

1. Definitions
2. Meaning of torture
3. Offence of torture
4. Offence of causing cruel, inhuman or degrading treatment
5. Obligation to obey order not defence or ground for reduction of sentence
6. No justification for torture
7. Disobeying order to commit torture
8. Extraterritorial jurisdiction
9. Expulsion, return or extradition
10. Training and education
11. Review of interrogation rules
12. Investigation of torture and other forms of cruel, inhuman or degrading treatment
13. Redress for victims of torture
14. Inadmissibility of evidence obtained through torture
15. Duty to report torture
16. Protection of victims, witnesses and persons reporting torture
17. Power of court to make compensation order
18. Short title and commencement

**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

#### **Definitions**

- 1.** In this Act, unless the context otherwise indicates -

“Minister” means the Minister responsible for Justice;

“Ombudsman” means the Ombudsman appointed under Article 90 of the Namibian Constitution;

“police” means the Namibian Police Force established by section 2 of the Police Act, 1990 (Act No. 19 of 1990);

“Prosecutor-General” means the Prosecutor-General appointed under Article 88 of the Namibian Constitution;

“public official” means any member of the defence force, the Namibian Police Force, a municipal police force, the Namibia Central Intelligence Service, the Namibian Correctional Service or any person (whether appointed or elected) acting or appearing to act on behalf of the State;

“torture” has the meaning assigned to it in section 2; and

“victim” means a person who has or has allegedly been subjected to an act of torture or cruel, inhuman or degrading treatment.

### **Meaning of torture**

2. (1) For the purpose of this Act, “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.

(2) The reference to pain or suffering in subsection (1) does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

### **Offence of torture**

3. 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.

### **Offence of causing cruel, inhuman or degrading treatment**

4. A public official who, while performing his or her official duties, holding himself or herself out to perform his or her official duties or purporting to perform his or her official duties -

- (a) performs an act calculated to; or
- (b) fails to perform an act with the aim to,

subject a person to serious pain or suffering, or to subject a person to cruel, inhuman or degrading treatment, commits an offence and is on conviction liable to imprisonment for a period not exceeding 15 years.

**Obligation to obey order not defence or ground for reduction of sentence**

5. Despite any other law to the contrary, the fact that a suspect or an accused person was under an obligation to obey an unlawful order of a government or superior, is -

- (a) not a reason for him or her not to be arrested or tried for allegedly committing an offence under section 3 or 4;
- (b) not a defence to a charge of committing an offence under section 3 or 4;
- (c) not on its own a ground for reduction of a sentence under this Act, if that person has been convicted of an offence under this Act.

**No justification for torture**

6. No exceptional circumstances, including but not limited to, a state of war, threat of war, internal political instability, serious or prevalent crime, national security, terrorism, or any state of emergency, may be invoked as a justification for torture.

**Disobeying order to commit torture**

7. A public official may not be subjected to any disciplinary or administrative action or be punished for disobeying an order to commit torture.

**Extraterritorial jurisdiction**

8. For all purposes in law an offence in terms of section 3 or 4 is deemed to have been committed in Namibia -

- (a) if the perpetrator is a citizen of Namibia;
- (b) if the perpetrator is ordinarily resident in Namibia; or
- (c) if the offence has been committed against a Namibian citizen or against a person who is ordinarily resident in Namibia.

**Expulsion, return or extradition**

9. (1) A person may not be expelled, returned or extradited from Namibia to another State, if there are grounds for believing that the person concerned would be in danger of being subjected to torture in that State.

(2) To determine whether there are grounds for believing that a person would be in danger of being subjected to torture in a state, all relevant considerations must be taken into account including, where applicable, the existence in that state of a consistent pattern of gross, obvious or mass violations of human rights.

## **Training and education**

**10.** (1) Government ministries, offices and agencies responsible for the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment must develop and implement programmes to -

- (a) educate public officials involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment, on the prohibition against torture and other forms of cruel, inhuman or degrading treatment;
- (b) provide assistance and advice to any person who wants to lodge a complaint of torture; and
- (c) train public officials on the prohibition, prevention and combating of torture and other forms of cruel, inhuman or degrading treatment.

(2) The programmes referred to in subsection (1) are compulsory and must be evaluated and conducted on a regular basis.

## **Review of interrogation rules**

**11.** Government ministries, offices and agencies responsible for the custody, interrogation or treatment of persons subjected to any form of arrest, detention or imprisonment, must on a regular basis review their regulations, rules, codes, directives, instructions, methods and practices relating to interrogation of persons as well as arrangements for the custody and treatment of such persons with a view to prevent cases of torture and other cruel, inhuman or degrading treatment.

## **Investigation of torture and other forms of cruel, inhuman or degrading treatment**

**12.** (1) If the Ombudsman receives a complaint under section 15, or on reasonable grounds suspects that section 3 or 4 has been contravened, the Ombudsman must promptly, thoroughly and impartially investigate the matter.

(2) Nothing in this Act or in any other law prevents the Ombudsman from investigating an allegation of torture or other forms of cruel, inhuman or degrading treatment which has already been investigated by the police if the Ombudsman reasonably believes that the investigation by the police was not thorough or impartial.

(3) Every public official must cooperate with the Ombudsman for the purpose of investigations referred to in this section.

## **Redress for victims of torture**

**13.** (1) A victim may obtain redress from the perpetrator and has an enforceable right to fair and adequate compensation, restitution, rehabilitation and guarantees of non-repetition.

(2) If a victim dies as a result of torture, his or her dependants may claim the compensation contemplated in subsection (1).

(3) Nothing in this section affects any right of the victim or other persons to compensation which may exist under any other law or the common law.

**Inadmissibility of evidence obtained through torture**

**14.** (1) For the purposes of this section, evidence obtained through torture means -

- (a) evidence of any confession or admission made by a person while he or she is being tortured and any confession or admission made after a person has been tortured or as a result of a reasonable fear that he or she would be tortured or that torture will continue;
- (b) evidence of any statement made that incriminates any other person which has been made under the circumstances referred to in paragraph (a); or
- (c) evidence of any fact discovered or inferred from any information obtained from any person under the circumstances referred to in paragraph (a).

(2) No evidence obtained through torture is admissible in civil or criminal proceedings, except -

- (a) in order to prove that a person has been tortured;
- (b) if the person who has been tortured gives permission for the leading of such evidence if the court is satisfied that the permission has been given freely and voluntarily and with full appreciation of the consequences of such permission;
- (c) if the person who has been tortured is unable to give the permission referred to in paragraph (b), if the court is satisfied that the admission of the evidence would not be to the advantage of a person who in any manner participated in the torture or that the admission would not tend to encourage or reward torture in future; or
- (d) if the admission of the evidence is necessary to ensure that an accused is afforded a fair trial as contemplated in the Namibian Constitution.

**Duty to report torture**

**15.** A person who -

- (a) suspects or on reasonable grounds suspects that torture is being committed or has been committed by a public official, must report his or her suspicion to a member of the police and to the Ombudsman; and
- (b) fails, refuses or neglects to report his or her suspicion of the commission of torture, commits an offence and is on conviction liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

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**Protection of victims, witnesses and persons reporting torture**

**16.** The State must ensure that -

- (a) a person making a complaint relating to the contravention of section 3 or 4, whether that person is the victim or not; or
- (b) a witness,

is protected against all forms of ill-treatment or intimidation as a consequence of the complaint or any evidence given in respect of torture or other forms of cruel, inhuman or degrading treatment.

**Power of court to make compensation order**

**17.** (1) If a person is convicted of an offence under this Act, the court may, on the application of the victim or the victim's dependants (where the victim has died) or the prosecutor acting on behalf of the victim or the victim's dependants, award the victim or the victim's dependants compensation for damage or loss he or she has suffered as a result of that offence.

(2) The order under subsection (1), may include, but is not limited to -

- (a) payment for physical or mental harm or loss suffered;
- (b) reimbursement of expenses incurred as a result of victimisation;
- (c) loss of earnings and future loss of income; or
- (d) costs required for legal, medical and psychological expenses.

(3) The court may also make such an order under subsection (2), against the convicted person's employer if the offence was committed in the course of the convicted person's employment.

**Short title and commencement**

**18.** (1) This Act is called the Prevention and Combating of Torture Act, 2019, and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

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