

**PRISONS IN NAMIBIA**  
**REPORT OF THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF**  
**DETENTION IN AFRICA**

**THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**  
**Report to the Government of Namibia**  
**on the visit of the Special Rapporteur on**  
**Prisons and Conditions of Detention in Africa**  
**from 17 to 28 September 2001**

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## **Introduction**

### ***Dates of the visit and composition of the delegation***

The Commissioner, Dr Vera Mlangazuwa Chirwa, Special Rapporteur on Prisons and Conditions of Detention in Africa of the African Commission on Human and Peoples' Rights, African Union, visited Namibia from 17 to 28 September 2001.

The purpose of this visit was to evaluate and document conditions of detention in Namibia and to start a constructive and permanent dialogue with the government of Namibia with the aim of improving conditions of detention and rehabilitation in Namibia.

The Special Rapporteur was accompanied by:

- Dr. Alpha Oumar Sankarela Diallo, Chief Medical Officer, Security and Prison Services, Guinea Conakry
- Annie Rashidi, Lawyer, the African Commission of Human and Peoples' Rights, Gambia
- Audrey Pascaud, Assistant, France

The African Commission of Human and Peoples' Rights wishes to thank them for their contribution to this mission.

### ***General situation in Namibia***

#### *Geography*

Namibia is situated in Sub-Saharan Africa, with an area of 824,000 square kilometres. It is surrounded by Angola, Botswana and South Africa. It is one of the most arid countries in the world with a correspondingly low demographic density. Namibia is divided into 13 districts and 102 sub-districts.

#### *Population*

In 1991, the total population was 1,409,920 inhabitants, of which more than 70% lived in rural areas. Only 4.2% of rural families have access to electricity. 42% of the population are children under 15 years of age. 98% of the urban population have access to running water, whilst 75% of the rural population obtain water supplies from wells, artesian wells, streams, canals and lakes.

The levels of literacy are 90% in cities and 69.2% in the countryside, although only 49% of the population can speak the official language of Namibia, namely English. While the overall level of schooling is high (77.6% have been to school), the number of those who actually finish the full school cycle is very low.

#### *Economic Features*

The Namibian economy depends primarily on agriculture and fishing. Mining, the manufacturing industry and tourism are also important. The growth rate has been 3.9% on average since 1989. Namibia has important assets to ensure its development. The country is politically stable. It has good infrastructure, a social security system and a solid fiscal basis. Namibia has also a low level of indebtedness and no international commitments involving structural adjustment or other economic restructuring programmes.

In Namibia, as in many other African countries, agriculture supports the majority of the population. The dual structure of the sector explains why some 6,500

commercial farms of around 7,000 hectares each cover an area of 44% of the country, whilst communal agricultural farms, on which 70% of the population depend for their livelihood, occupy 43% of the area. In the middle and the south of the country, white Namibians carry out intensive livestock farming of cattle and astrakhan sheep for export. This accounts for 80% of the agricultural production of the country. This situation stirs up the tensions created by the unresolved problem of redistribution of land, which had been promised at independence in 1990.

#### *Social and cultural characteristics*

The capital, Windhoek, attracts more and more young people looking for work. It is the most populated region apart from the north of the country. It is inhabited mostly by white people. As in the apartheid era, most black people leave in the evening to go home to Katutura, the suburb where they were forced to live during the 1960s.

English, which became the official language, is used mainly in business circles, however, only 10% of Namibians speak it fluently. Four main languages are spoken in the country: Oshivambo and its dialects are spoken in the four central northern regions and by most black inhabitants in the southern urban centres. Nama, is a language spoken by the Khosan as well as by the Damara people, whilst 9% of the population speak Herero and Rukavango. To the west, the people of Caprivi speak Lozi. Speaking Afrikaans helps to make oneself understood nearly everywhere in the country and the South African language is used by 10% of Namibians, including people of mixed race, the Rehoboth Basters and most of the 80,000 white inhabitants. The remainder speak German.

Decentralisation is expected to greatly improve access to health services. The lack of infrastructure is pushing the government to build units in rural areas. But the main goal is to combat the HIV/AIDS pandemic, which is an important threat and presently one of the major causes of death in the country. Namibia also suffers from problems relating to the disparity between levels of income. 65% of the total revenue is concentrated in the hands of 10% of the richest people in society. Life expectancy, the level of literacy and revenue vary from region to region. Namibia is seeking to develop initiatives to alleviate poverty and allocates around 30% of its annual budget to education, which is regarded as a priority.

#### *History and general political structure*

The country was under German colonial administration from 1890 up to the end of the First World War, when its mandate was handed over to Great Britain within the framework of the League of Nations. The powers of the mandate were delegated to the South African Union in 1920 and a system of apartheid was imposed shortly after. South Africa did not abandon its mandate, despite repeated requests from the United Nations.

In 1959, the South West African People's Organisation (SWAPO) was set up in Namibia as an organisation of opposition to South Africa. As South Africa still refused to give Namibia its independence, SWAPO created an armed wing, the People's Liberation Army of Namibia (PLAN) to fight for freedom. The first armed conflict broke out in 1966 and continued until SWAPO and South Africa signed a cease-fire agreement through the mediation of the United Nations in 1989.

Elections were organised in 1989 and SWAPO won most of the seats. A Constituent Assembly was set up to draft a new constitution. Namibia gained independence in 1990 and adopted its Constitution in the same year.

Namibia is a unitarian and secular State with a multiparty government system. It is divided into thirteen administrative regions. Each region has an elected regional

council with a regional governor at its head. The Head of State and of the government is the President, who shares executive power with the Council of Ministers. The Council has 23 members including the Head of State (President), the Prime Minister and the Attorney General. The National Assembly exercises legislative power.

The judiciary includes the Supreme Court, the High Court and the lower jurisdictions. The independence and impartiality of the judiciary are guaranteed in the Constitution. The High Court has unlimited competence whilst the Supreme Court is a court of appeal. The Attorney General can also request the Supreme Court to determine the constitutionality of an Act or law. The magistrate's courts deal with offences that are punishable with a fine of up to NAD 20,000 (100 NAD = 1 USD approx.) or up to 5 years of prison. Regional courts deal with cases that are punishable with a fine of up to NAD 100,000 or up to 20 years of prison. These two jurisdictions are called Lower Courts. Any convicted person may appeal to the High Court.

The Constitution contains a Declaration of Rights within a legal framework of promotion and protection of human rights.

### ***Unfolding of the mission***

#### *Prisons and police stations visited*

Maximum Security Prison and central police station of Windhoek  
Wanaheda central police station and police station  
Maximum Security Prison and central police station of Walvis Bay  
Swakopmund prison (short visit)  
Omaruru Prison and police station  
Oluno Maximum Security Prison and Ondangwa police station,  
Grootfontein Prison and police station;  
Elisabeth Nepemba Juvenile Rehabilitation Centre  
Rundu police station  
Maximum Security Prison and central police station of Hardap;

#### *Consultations undertaken by the delegation*

The Special Rapporteur and her delegation held talks with:

- His Excellency the President of the Republic of Namibia, Dr. Sam Nujoma
- The Minister of Home Affairs, the Honourable Jerry Ekandjo MP
- The Minister of Justice, the Honourable Dr. Ngarikutuke Tjiriange MP
- The Minister of Prisons and Correctional Services, the Honourable Marco Hausiku MP

- The Deputy Minister of Prisons and Correctional Services, the Honourable Jeremiah Nambinga MP
- Chairman of the Parliamentary Standing Committee on Security, the Honourable Ben Amathila MP
- The Permanent Secretary of the Ministry of Justice, Ms. L.N. Shapwa,
- Acting Chief of the Lower Courts, Mr. A. Siboleka
- The Commissioner of Prisons, Mr Evaristus Shikongo
- The Inspector General of Police, Lt. General L.P. Hangula,
- The Deputy Commissioner of Prisons, Mr Fwafwa Mabakeng,
- The Deputy Commissioner of Prisons, Mr. John W. Nyoka
- The Deputy Inspector General of Police, Major General Fritz Nghishililuwa
- The Assistant Commissioners of Prisons, Mr. Melvin Martin, and Mrs. Anna Amutenya,
- The Director of Investigations of the Office of the Ombudsman, Adv.Tousy Namiseb.

The delegation had many very useful discussions with the Officers in Charge of prisons, the staff of the Commissioner of Prisons and the Inspector General of the Police.

The delegation also consulted representatives of non-governmental organisations: CRIS (Criminals return into society), the National Society for Human Rights, the Legal Assistance Centre, Change of Lifestyle Home's Project and Bridge.

The Special Rapporteur met the media: Namibia Press Agency (Nampa), Windhoek Observer, and Namibian Broadcasting Corporation.

Many prisoners were questioned in private, individually or in small groups, within each establishment visited.

#### ***Cooperation received during the visit***

Talks with the national authorities developed within an excellent spirit of cooperation. The Special Rapporteur would like to express special gratitude to His Excellency Dr. Sam Nujoma, the Honourable Jerry Ekandjo MP, the Minister of Home Affairs, the Honourable Dr. Ngarikutuke Tjiriange MP, the Minister of Justice, the Honourable Marco Hausiku MP, the Minister of Prisons and Correctional Services, the Honourable Ben Amathila MP, Chairperson of Parliamentary Standing Committee on Security, the Honourable Jeremiah Nambinga MP, the Deputy Minister of Prisons and Correctional Services, the Permanent Secretary of the Ministry of Justice, L.N. Shapwa for their time to undertake discussions with the delegation.

The Special Rapporteur would also like to highlight the invaluable assistance offered to her delegation by the Ministry of Prisons and Correctional Services in the person of DCP John W. Nyoka, and would also like to thank all the other people appointed by the various relevant Ministries to facilitate the delegation's work.

In short, the delegation benefited from a very satisfactory cooperation on the part of those responsible and of the staff in the places visited. The Special Rapporteur would like to underline the fact that the delegation was given quick access to all the prisons it wanted to visit, was allowed to have private conversations with any prisoners it chose to interview and to consult all the registers it wished to.

It is undeniable and appreciated that in the course of the visit the officers in charge and their personnel divulged a lot of information in relation to the prison institution and the delegation very much appreciated the introductory note prepared in advance by the prison administration and the complete report presented by each director to the Special Rapporteur at the beginning of the visits to every establishment. At the end of each visit, the Special Rapporteur made some recommendations to the authorities, which gave rise to several exchanges of views.

The Special Rapporteur also wishes to point out that staff as a whole were very flexible with regard to their work hours so that the visits were carried out as smoothly as possible and according to the wishes of the Special Rapporteur. She was especially touched by the warm welcome (singing and dancing) she received in some establishments and would like to thank the personnel and prisoners who took the initiative to do so. The Special Rapporteur encouraged the idea as it keeps prisoners in good spirits.

The Special Rapporteur also benefited greatly from the help of the Legal Assistance Centre during the organisation of her visit and while it was under way.

Nevertheless, in spite of this generally positive picture, the Special Rapporteur had great difficulty obtaining permission to visit some police stations that she had chosen. Before her arrival, and in spite of renewed requests, it was not possible to receive a clear official response. Once she was in Namibia, she initially met with the refusal from the police authorities. After negotiations, they finally did allow the Special Rapporteur and her delegation to visit certain police stations. The visiting schedule was thus somewhat uncertain up to the last moment. This had serious consequences in the way the mission developed, as the programme had to be reorganised considerably once the authorisations had been given. The Special Rapporteur would like to point out that the mandate conferred on her by the Heads of State of the African Union is to visit the places of detention of her choice in order to verify the conditions of detention in these places. Obtaining information on the police stations of Namibia was therefore necessary in order to accomplish this task, in view of the fact that a large number of people are detained in these establishments. The Special Rapporteur also wished to verify the correctness of the information that she had received when preparing her visit, which was giving rise to concerns. This she managed to do in the end, with the exception of the allegations concerning the police station of Dordabis.

To conclude, the Special Rapporteur was very pleased with the spirit of cooperation shown by the authorities and is sure that all the parties concerned will take into consideration the comments and recommendations made in this report in a constructive manner.

#### ***Context of the visit***

In the year 2000, the Government approved a new Prison Policy Document and mission statement that should enable the prison administration to distance itself from the purely punitive nature of its actions practised till then, and to set up a system that would observe human rights, the effectiveness of the sentence, rehabilitation, alternatives to prison, appointment of qualified staff and cooperation between all the partners in the justice system and the community. The aim is no longer to increase the capacity of prisons. The construction of four additional prisons since 1995 has not solved the problem of prison overcrowding. The prison authorities are therefore envisaging other measures and consider the current period as transitional, working towards fulfilling the aims of this Document. To them the government's support is viewed as considerable progress necessary for achieving the planned reforms.



It should be noted that these projects for reform are received with mixed feelings by the public, which is opposed to what it thinks to be exorbitant privileges for criminals. The authorities believe that society does not yet understand the importance of these reforms, and especially that first and foremost it means setting up an effective rehabilitation policy as well as combating recidivism and crime.

## **Findings**

### ***The prison system***

In Namibia there is a Ministry of **Prisons** and Correctional Services – Namibian Prison Service (NPS). Enshrined in the Constitution, NPS was created in 1995 and its aims are, among others, to reform the prison system inherited from the colonial regime, and the social rehabilitation of offenders. NPS has around 1500 staff, some of whom already held their positions before the independence of the country in 1990. The Ministry has a Permanent Secretary in charge of the general administration and finances. The prison administration is governed by the Prison Law of 1998. The prison administration manages 13 establishments: four maximum security prisons, two open prisons (prison farms), one juvenile centre and district prisons. There is no female prison, but special units within the bigger prisons. Some regions do not have any prisons and the inmates have to serve their sentence in prisons far from their homes (those originating from the Caprivi region, for example). As the E. Nepemba juvenile centre is under construction, at the moment it only receives a small number of juveniles. Other juveniles are being kept in special units while waiting to be transferred. All these establishments receive mainly convicted prisoners. It should be noted that at the time of the Special Rapporteur's visit, one prison (the prison of Grootfontein) was being used as a remand centre, having 125 detainees on remand from the Caprivi region who were allegedly involved in an attempted to secede that region from the rest of the country. The prison budget represents 1.6% of the country's total budget, which is of the order of 86 million Namibian dollars (NAD).

It should be noted that sometimes prisoners are not all subjected to the same legal regime. In fact, some members of the prison administration consider – it is an incorrect interpretation, which is not shared by the Ombudsman's office – that prisoners sentenced before the Prison Law of 1998 came into force are not subject to that law. They are still subjected to the previous regime, namely, the prison law of 1959. This conflicting interpretation is the cause of misunderstandings regarding the application of parole in particular, with some staff subjecting prisoners sentenced before 1998 to the 1959 law and then retracting this after discovering that the 1998 law supersedes the former one. The Special Rapporteur recommended this should be corrected so that inmates are treated equally.

**Police stations** are under the authority of the Ministry of Home Affairs. There are 154 of these, of which 18 are border posts, receiving the majority of people in police custody (48 hours as a rule) or on remand, whatever its duration. If there are too many prisoners and there are not enough police cells, those in excess may be transferred to the nearest prison, if it is not also already overcrowded. This is not without problems as in prisons, for instance, only certain inmates have the right to receive visits from their families whereas, in principle, all those on remand have this right in police stations. It has not been clearly established which regime is to apply. The General Policy Paper mentioned above recommends that in future prisons should receive people who have been remanded in custody. The Special Rapporteur seriously recommended that GPP recommendations are put in practice to assure uniformity.

### ***Conditions of detention***

#### *Prison population*

It was not possible to establish a figure for the total population of convicted prisoners and those on remand. The figures for these two categories held in prison were

supplied to the delegation without any difficulty by the prison authorities. However, the figures and statistics concerning the number of people on remand or in detention awaiting deportation (foreigners) in police cells were not supplied by the police authorities in spite of the delegation's repeated requests, both before and during the visit. The delegation had therefore to work on the basis of estimates supplied by the prison administration without being able to confirm them.

At the time of the visit, the delegation was informed by the authorities that there were around 4,800 convicted prisoners and 4,000 on remand (of whom 259 were held in prison and the remainder in police stations) in Namibia. If these figures were to be confirmed by the authorities, especially the police, the rate of imprisonment would be extremely high, of the order of 517 prisoners per 100,000 inhabitants.

### In prisons

At the time of the visit, there were 5,102 detained persons distributed as follows:

	Adult male	Adult female	Babies (1)	Juveniles boys	Juveniles girls	Total	%
Convicted	4431	101		297	5	<b>4829</b>	94.6
On remand	233	5		21	0	<b>259</b>	5.2
<b>Total</b>	<b>4664</b>	<b>106</b>	<b>9</b>	<b>318</b>	<b>5</b>	<b>5102</b>	
%	91.4	2.1	0.2	6.2	0.1		

(1) Children detained with their mothers

Among those sentenced in 2000<sup>1</sup>:

First offenders	Second offenders	Recidivists
81.3 %	11.8 %	7.0 %

Length of prison sentences:

Less than a month	1-6 months	6 months-2 years	2-5 years	5-10 years	More than 10 years	Life*
1.2 %	44.0 %	36.2 %	12.9 %	3.9 %	1.7 %	0

\*At the time of the visit, the number of persons sentenced to life in prison was greater (7 in Windhoek prison).

Among the convicted persons in the year 2000, the distribution by age was:

Less than 15 years old	16-20 year olds	21-30 year olds	31-50 year olds	More than 50 years old
0.5 %	16.7 %	53.1 %	27.8 %	1.8 %

<sup>1</sup> Source: The Prison Administration's Annual Report for 2000.

Overall prison capacity is 3,822 places<sup>2</sup>, i.e., the overcrowding rate is 33%. This phenomenon is all the more disquieting considering that four additional prisons have been built since 1996 and the number of convictions has diminished<sup>3</sup>. Omaruru prison was built for 68 inmates, but on the day of the visit there were 182, i.e., an overcrowding rate of 163%.

According to the Ministry of Justice, the increase in the prison population cannot be attributed to an increase in criminality, but to a conjunction of factors, none of which would be enough on its own: better access to justice, greater severity on the part of judges and longer sentences, as well as a proliferation of short sentences for petty crimes. Thus, in the year 2000, 81.4% of the prison population was sentenced to less than two years imprisonment. Added to this, there are the dysfunctional Release Boards. These are boards that meet periodically at national and regional level, to decide on the release of certain prisoners based on precise criteria. The conditions for obtaining parole and remissions are so prohibitive that in the end these measures are rarely put into practice. It should also be mentioned that detention on remand is not taken into account when sentence is passed. Only 2.5% of the prison population benefited from parole in the year 2000.

There are some measures that could help reduce overcrowding, for example the judges have the discretion to give fines seeming, however, to prefer the sanction of imprisonment. It should be noted that a community service (CS) programme as an alternative to imprisonment will be developed in the years to come for offences that carry a sentence of less than two years. To be effective, any plan to combat overcrowding and the increase of the prison population should combine several kinds of measures:

- Pre-sentencing measures: mediation, diversion, suspended sentences with or without probation, judicial control, etc.
- Post-sentencing measures: greater use of parole and reductions of sentences, permissions to go out, partial release, etc.

Overcrowding has a great many consequences:

- insufficiency of rehabilitation programmes;
- unsafe conditions of detention (lack of beds, blankets, some inmates sleeping too close to the bathrooms, etc.);
- promiscuity and transmission of diseases;
- difficulty in keeping the premises clean;
- difficult working conditions for staff, in particular lack of specialist and surveillance staff, which has consequences for the time prisoners spend outside their cells and exercising in the open air;
- problems with water supplies and cleanliness of sanitary installations;
- lack of exercise where space is limited, etc.

Since independence, the president has granted presidential pardons on five occasions. These affected 3,757 prisoners, of whom 107 re-offended subsequently.

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<sup>2</sup> Information on 14 September. Source: Prison Administration

<sup>3</sup> Source: Ministry of Justice

The rate of recidivism was of the order of 18.7% in 2000. This is explained in great part by the lack of preparation for release and lack of social, training, educational and psychological support programmes.

In prison there is a small proportion of prisoners on remand (around 5%). Some of them have, however, spent a long time waiting to be tried; from 1 to more than 2 years in Windhoek and Omaruru prisons (female section), and 4 to 5 years in the mentally ill section of the Windhoek Central Prison. The prisoners in Grootfontein prison were interrogated in August 1999. There is no mechanism for compensation in cases of long and abusive remand in custody. Nevertheless, those who have been kept on remand for an excessively long time may lodge a complaint.

Women represent 2.2% of the prison population. Nine babies are in prison with their mothers.

The prison population is young. 70.2% were under 30 years old in the year 2000. Those under 20 represented 17.2%. Majority is set at 18 years and the age of penal responsibility is 16 years. Yet, some juveniles under the age of 16 are sometimes detained and sentenced to imprisonment (0.5%). Some juveniles also receive very long sentences. A juvenile in Windhoek prison was sentenced to 18 years in prison when he was only 17 years old, another in Walvis Bay prison was sentenced to 8 years at the same age.

The prison population is also largely illiterate, especially in the south of the country. Even when this is not the case, it mostly lacks professional skills. These factors in conjunction with the lack of legal aid explains why so many prisoners have difficulty in deciphering and understanding the decisions which affect them as well as correspondence with the administration, justice system and Ombudsman's office.

The prisons hold around 200 foreigners, most of them from Angola and the DRC. The delegation noted that foreign detainees who had served their sentences were still detained in prison while awaiting deportation or transfer to a refugee camp (17 at the Omaruru prison). Some of them had been in this situation for 6 months (Windhoek prison). The Special Rapporteur requested the prison officials of the relevant prisons to take all the necessary measures to have these persons transferred without delay. The Special Rapporteur also noted that foreigners are not eligible for parole. The authorities should therefore ensure that any foreigner who wishes to serve his/her sentence in his/her own country, should be enabled to do so if possible (interstate agreements).

It should be noted that Namibia does not have political prisoners. However, the Grootfontein prison only contained people on remand – with the exception of a few convicted prisoners who were working on the upkeep of the prison, belonging to a group from the Caprivi region suspected of wanting to secede. This group is referred to again later on in this report, as many were subjected to various instances of ill treatment during their detention in police stations.

### In police stations

In police stations people are not only detained while awaiting trial, but also while waiting for the courts to give a verdict or for the enquiry to come to an end.

The situation in the cells of the police stations visited is extremely worrying.

Police stations	Average density in cells (m <sup>2</sup> per detainee)	1.4
Central - Windhoek	Average density cell + courtyard	1.4

- the fact that convicted prisoners sometimes serve their sentences in police cells;
- the fact that committal orders stipulate detention in police cells;
- the fact that police operations are regularly carried out in regions near the border, particularly in Rundu, in order to arrest criminals and illegal immigrants;
- the fact that defendants are not transferred to the nearest prison after seeing the judge, spending months in police station cells (up to more than a year<sup>4</sup>) for petty offences (theft of mobile phones for instance);
- the large number of prisoners who are not freed having been refused bail, having been set too high or for being unable to contact his/her family to ask for help. This is due in great part to the fact that magistrates do not receive enough training (three months) and to the fact that the suspect's profile and financial capacity are not taken into account;
- insufficient possibilities of legal assistance;
- arrest of people before the enquiry is concluded;
- delayed enquiries due in particular to transport problems;
- lack of respect for the legal limit of 48 hours of police custody;
- frequent adjournment of hearings by the courts, often due to transport problems or lack of personnel to escort the prisoners to court, but also because in some remote regions hearings are held by the courts only once a month, at which time only one case is dealt with postponing the others to the next session;
- This overcrowding is due, among others, to the following:
  - frequent adjournment of hearings by the courts, often due to transport problems or lack of personnel to escort the prisoners to court, but also because in some remote regions hearings are held by the courts only once a month, at which time only one case is dealt with postponing the others to the next session;
  - lack of respect for the legal limit of 48 hours of police custody;
  - delayed enquiries due in particular to transport problems;
  - arrest of people before the enquiry is concluded;
  - insufficient possibilities of legal assistance;
  - the large number of prisoners who are not freed having been refused bail, having been set too high or for being unable to contact his/her family to ask for help. This is due in great part to the fact that magistrates do not receive enough training (three months) and to the fact that the suspect's profile and financial capacity are not taken into account;
  - the fact that defendants are not transferred to the nearest prison after seeing the judge, spending months in police station cells (up to more than a year<sup>4</sup>) for petty offences (theft of mobile phones for instance);
  - the fact that committal orders stipulate detention in police cells;
  - the fact that convicted prisoners sometimes serve their sentences in police cells;
  - the fact that police operations are regularly carried out in regions near the border, particularly in Rundu, in order to arrest criminals and illegal immigrants;

\* except cells for solitary confinement set aside for 3 cases of TB  
 \*\* cell for solitary confinement including for TB cases

Wanaheda - Windhoek *	0.6	1.1
Walis Bay	1.2	2.3
Omaruru	1.3	2.7
Ondangwa	2.4	6.0
Grootfontein	1.6	2.9
Rundu	2.1	4.7
Mariental	0.9	3.0
	1.1	2.1

- the fact that foreigners are kept in detention awaiting deportation for 6 to 7 months and cannot be transferred to a camp or to the border until there are enough of them.

The authorities informed the Special Rapporteur that prisoners on remand are transferred to prison after three months. In reality, remand in custody in police detention centres can be much longer. On the day of the visit, some of the remandees had been detained without trial for 27 months at Ondangwa police station, 18 months and 4 years at the central police station of Rundu (psychiatric cases), 14 months at Walvis Bay police station, 13 months at Mariental police station, and 12 months at Omaruru and Grootfontein police stations. One juvenile had been held for 13 months at Wanaheda-Windhhoek police station. He was from Grootfontein and during that period had only been visited twice by his parents. Remandees are schoolchildren or students. Others have already spent many months waiting for their cases to come up for trial, while the sentences they may receive may likely be shorter than the time already spent in detention (Ondangwa).

To this is added the case of foreigners who, in some cases, have served their prison sentence and have been transferred to a police station to await deportation or to be transferred to refugee camps (there were about 40 people in this situation at Wanaheda police station). The immigration law of 1993 determines further that foreigners should not be detained for more than 14 days. After this period, they should be seen by a judge, deported or transferred to a refugee camp. This clause does not seem to be fully applied. Consequently at Walvis Bay prison two foreigners had been detained without trial for three weeks.

Nonetheless it should be noted, and the Special Rapporteur wishes to encourage these initiatives, that within the framework of the Conference of Heads of Correctional Services of Southern, Central and West Africa, efforts are being made to develop bilateral transfer agreements and to adapt national laws.

### *Premises*

The delegation paid a thorough visit to 7 of 13 prisons (Windhoek, Walvis Bay, Oluno and Hardap Maximum Security Prisons; Omaruru, Grootfontein Prisons; Elisabeth Nepemba Juvenile Rehabilitation Centre and a short visit to Swakopmund prison. The delegation also visited 8 important police stations (Windhoek, Walvis Bay and Mariental Central police stations, Wanaheda, Omaruru, Ondangwa, Grootfontein and Rundu police stations).

Before independence in 1990, under the Apartheid regime in South Africa, the current police stations were used as prisons for black people whilst the prison establishments were for white people.

The contrast between the conditions of detention in prisons and those observed in police cells is striking.

**Prisons** were all built according to the same model: sections made up of dormitories/cells and courtyards linked by corridors, all in one unit, compact and complex. Some courtyards are covered with bars (juvenile section of Windhoek prison). Four prisons have been built since independence, since the Ministry of Prisons was created, to cope with the increase in the prison population. New establishments are being built: Elisabeth Nepemba Juvenile Centre, Scott Prison Farm and the Namibian Prisons Service Training College at Omaruru. The condition of prisons is generally satisfactory. Both old and new constructions are well maintained and the equipment and security rules seem to be effective insofar as the number of escapes is limited (none since the end of 1999 from Windhoek prison, a

single escape in two years from Walvis Bay prison). Some prisons, such as Hardap prison, are made up of an old part and a new, recently built wing. Omaruru prison was built in 1961, renovated in 1988 and completely repainted in August 2001.

**Police** detention centres are practically all built according to the following model: a building either adjoining the police station or standing alone, divided into sections each containing one or two cells and usually a courtyard. The windows are sometimes covered with corrugated iron (a few centimetres from the window to let in some air) to prevent the detainees from speaking to people passing in the street (Ondangwa, Grootfontein). The conditions in these premises are insalubrious and appalling, even though some of the stations visited have recently been or are currently being renovated (Walvis Bay). The delegation found serious problems of hygiene, maintenance and security. The problems observed may be blamed on overcrowding, lack of prison organisation, lack of communication between inmates and staff, lack of training and responsibility of the personnel in charge of supervising prisoners (see paragraphs on staff, hygiene and cells) and lack of maintenance (the doors of the cells in Mariental station can hardly be opened any longer due to rust and dilapidation).

#### *Classification*

There are two sorts of **prisons**: maximum security prisons, which are intended to house dangerous prisoners. A new classification of prisons and prisoners is under discussion within the prison administration, which currently believes that not all prisoners sentenced to long terms have necessarily got to be detained in maximum security prisons, and that those sentenced to short terms should not be held in maximum security prisons, as is the case at present (at Windhoek maximum security prison some inmates have been sentenced to no more than two months imprisonment). At present, prisoners sentenced to more than three years of prison are meant to be held in the big prisons (Windhoek, Hardap and Oluno). However, some prisoners with lesser sentences are also held in these prisons and some who have been sentenced to more than three years are sometimes held in district prisons. This happens because not all districts have prisons and the committees responsible for following up all the prisoners' files do not meet frequently enough or do not manage to deal with all the cases.

In theory, men, women and children are kept separate and live in different sections of these establishments. Female staff look after women prisoners. However, in E. Nepemba Centre, juveniles mingle with adult prisoners during the daytime. The delegation also found that in the central prison of Windhoek (maximum security) under-age girls were held together with adult women. The delegation also witnessed two adults of 29 sharing a cell with the under-age boys. The authorities explained that these were promoters (see below) who were placed there for reasons of security. Furthermore, half the young inmates in the juvenile section were over 18 years old. Finally, the cell for prisoners suffering from tuberculosis is located within the juvenile section. The Special Rapporteur would like to underline that this is unacceptable and that all adults as well as sick prisoners, should be transferred without delay to the appropriate sections.

The system of classification of inmates inside prison varies according to penal status, age, gender, etc. Prison Law determines that in principle each group should be detained separately. Each inmate has an internal ID which registers information such as his/her grade (see below), religion, penal status, name, sentence, date of admission and trial, date of release and nationality.



	Definition
Workers	Prisoners who have a regular job inside or outside the prison
Promoters	Prisoners who carry out and supervise activities (teaching, workshops and religious activities, etc.)
Presidential patients	Persons under observation or regarding whom a psychological/psychiatric inquiry is under way to determine whether they can be considered legally responsible and tried as such.
Remandees	Persons awaiting trial.
Second offenders	Convicted for a second (or other) offence(s).
First offenders	Persons in prison for the first time.
Recidivists	Persons with former convictions carrying prison sentences.
Foreigners	Non-Namibian nationals, with a sentence that they may still have to serve or have already served awaiting deportation or transfer to a refugee camp.
Juveniles	Young people of 18 and under.
Other convicted prisoners	All other prisoners who do not fit into the above categories and who could be classified within additional categories at the discretion of the Director of Prisons.

Privileges are granted by the administration according to the prisoners' conduct. It should be noted that this system of privileges is not applied at the juvenile centre E. Nepemba.

Grades	Number of visitors authorised per month	Family / group visits	Number of letters authorised per month	Authorised personal effects	Personal expenses allowed per month
A	3	Physical contact authorised	4	Radio	NAD 280
B	2	No contact	3		NAD 220
C	1	No contact	2		NAD 155
D	1	No contact	1		NAD 125

Grade A prisoners sometimes live with prisoners of other categories. This can create tensions and conflicts among the inmates (theft, envy, etc.). It can also lead to the prostitution of those who would like to gain greater material comfort.

In principle, new arrivals are placed for some months temporarily in the so-called Observation Section, whatever their sentence, whether they are first offenders or not, and then they are supposed to be transferred to the appropriate section under the regime with least privileges (D). Several months may go by before changing sections or benefiting from another level of privileges, as the prisoners' situation is reviewed every six months, or even after several years (some inmates in Walvis Bay prison have been in this section for 2 or 3 years). Inmates must serve a third of their sentence before being reaching grade A. As in section F of Windhoek prison or section C of Hardap prison (the section in which most new prisoners are held), short term sentence prisoners or first time offenders are allowed to mix with those who are in prison for the long term or with habitual offenders, or even prisoners whose behaviour is considered negative by the administration and have consequently not satisfied the conditions for obtaining greater privileges or a transfer to another section. Inmates at Walvis Bay prison in the so-called "admission section" complained about the destructive effect of the conditions of imprisonment. "They were better when they first arrived, and they are no longer normal."

The number of visits or letters a prisoner is allowed to receive and the nature of the items permitted in prison depend on the prisoners' grade and his/her conduct. These measures are not only unfavourable to preparing inmates for release, their return into society and maintaining family ties, they also create situations of inequality among the prisoners. This situation generates rancour and frustration, which are not always conducive to good behaviour. Furthermore, this system of inequality and privileges seems too rudimentary and can amount to a situation of arbitrariness. The system should be more constructive by favouring rehabilitation and being conceived in a way that will facilitate this. Thus, measures such as permission to go out and conjugal visits for married prisoners could be considered, including those serving long sentences, to encourage better behaviour, but above all, to promote the safeguarding of family ties and the offenders' reintroduction into the community.

In **police** stations, overcrowding and management difficulties are the cause for the serious problems found by the delegation: promiscuity among persons with contagious diseases (Rundu), juveniles detained with adults (Windhoek, Grootfontein). In a cell in Windhoek central police station, for example, the delegation found an adult and a minor with very scanty clothing who were sharing the same blanket. However it was explained that the juvenile had no blanket and that was why they were sharing one. The delegation was told that some convicts are sometimes held in police stations because they are being charged for a second time or simply because there are not enough convicts in the opinion of the police authorities to justify a transfer to prison. It should also be noted that foreigners, illegal immigrants or those awaiting deportation are detained together with common law prisoners. Women are in principle segregated from men, but the staff who look after them are nearly all men. When there is no place for women remandees in a police station, they are transferred to the nearest police station. (Mariental police station transfers women to Kalkfeed station 62km away).

### *Cells*

In **prisons**, accommodation is generally ventilated, dormitories are well lit and so are individual cells. Both usually adjoin a courtyard for exercise. The prisons visited mostly had both of these types of accommodation. The population density in prisons is high, but the layout (metal bunk beds fixed to the floor in the dormitories) means that most of the inmates sleep in a bed. Prisoners have a small individual locker, which is padlocked. Furthermore, each dormitory has an independent bathroom with showers, toilets, sinks and mirrors. There are a few separate cells, which are

separated from the rest of the room by a low wall and are equipped with a sink, a mirror and a toilet. Other sanitary installations with showers and toilets are usually accessible from the exercise courtyard.

However, it should be noted that some inmates have complained about the lack of shelter to protect them from the sun in the courtyard (Windhoek). Furthermore, the windows of the cells and dormitories are louvered. The delegation found that in a number of prisons the glazed windows were damaged (Windhoek, Walvis Bay). Prisoners cover the gaps with blankets in order to protect themselves from the wind (Windhoek central prison). Shards of glass could be a risk for the inmates and staff (mutilations, aggressions towards staff). The delegation saw no broken glass on the floor or anywhere else in the course of its visit.

The Special Rapporteur has great concerns regarding the situation of some inmates held in solitary cells for administrative reasons (section D of Oluno prison, individual cells of Hardap prison). These concerns refer not only to the duration of isolation (from 3:00 pm to 08:00 am ) but also to the very restrictive regime to which these prisoners are subjected. The juveniles held in Walvis Bay prison complained about being totally isolated from 3:00 pm to 8:00 am. The delegation noted that at Oluno prison a person who was on remand was kept in total isolation and did not participate in any of the prison's activities, either individually or collectively. This person only leaves his cell on the days that he is seen by the judge. In the Hardap prison, a person asked to be separated from the others because he was being harassed. The total absence of structured or communal activities is not favourable for the rehabilitation of a prisoner, nor for his/her mental and physical health as the living space is too confined.

Finally, the Special Rapporteur noted, at the time of her visit to Oluno prison, that a much larger number of prisoners than the cell was intended to hold could be locked in a cell from 11:00 am to 2:00 pm. This is what happened in Oluno prison, section N, on the day of the visit. The Special Rapporteur found that during the prison guard's lunch break 28 persons had been locked in a cell which usually held 16 persons. Whatever the reasons, it would seem that such overcrowding may be dangerous and this practice should be discontinued.

In the **police** stations, defendants are detained in cells next to closed courtyards with bars across the top. One cell is also used as a reception cell.

In most of the stations visited, the cells lacked ventilation, which was sometimes aggravated by putting corrugated iron over the windows at a very small distance from them, preventing the air from circulating properly. Prisoners live crammed together. The courtyards are entirely surrounded by walls; they are neither covered nor sheltered, but bars to prevent escape cover the top. People who sleep in the courtyard take refuge in the cell when it rains or when the sun is too hot, if they can. In Rundu police station, overcrowding is such that prisoners must sleep outside the main building, in a courtyard covered with bars, without shelter or toilets.

In the women's cell in Wanaheda police station it is very stuffy, and the layout of the premises is both dangerous and very uncomfortable. In fact, the prisoners have to heave themselves on to a sort of mezzanine without protection to dry their washing. This cell, which is independent from the others, used to be a reception room or a place for temporary reception of less than a day's duration. It has no sleeping facilities. The prisoners have no access to an exercise courtyard. A concrete bench along one of the walls is used as a bed by some of the women. The others spread their bedding on the floor.

*Sanitary installations and water*

In **prisons**, there are private bathrooms (showers, sinks, sometimes with warm water as in the section for juveniles in Walvis Bay), urinals and private flushing toilets adjoining the dormitories and individual cells. Other bathrooms and taps are accessible directly from the courtyard. The inmates have access to well built laundries, linen rooms and clotheslines. It should be noted however that section E of Grootfontein prison does not have a shower (an exception).

Usually prisons have no problem in obtaining a water supply. However, the delegation noted that there could be interruptions in supplies and that water was sometimes rationed in Oluno and Omaruru prisons (4 to 5 litres per day per prisoner).

The delegation noticed problems with drainage of waste water, leaks, plumbing, faulty flushes, deterioration of equipment (taps, flushes) and lack of maintenance (section F in Windhoek, Omaruru, Walvis Bay, juvenile sections, G, P and Q of Oluno prison, E. Nepemba juvenile centre, Hardap prison). Thus, some of the installations have been closed down (bathrooms in Hardap and Omaruru), which is all the more regrettable as the number of sanitary facilities is hardly sufficient, considering the large number of inmates. Furthermore, not all prisoners in Hardap prison have access to a private bathroom (inmates in the older part of the prison, sections A).

The Ministry of Works, Transport and Communication should be asked to intervene in all the prisons to make an assessment of the situation and undertake the necessary repairs to buildings and works. It should be remembered that there is a lot of pressure from the population living here. Maintenance should therefore be a priority to avoid quick and irreversible deterioration of the facilities.

Originally, the cells in **police** stations had toilets with flushes and a sink, but in most cases these no longer function. Prisoners therefore have to use basic installations in the courtyard that are often faulty: a shower, a toilet and a tap, without separation or privacy. In the Wanaheda and Ondangwa stations, faulty facilities are the cause of major unhygienic conditions (stagnant dirty water, smells, waste) inside the sections and in the central corridor of the building, which make the conditions of detention – and of work for staff – difficult and a health hazard. At Wanaheda, the detainees in the women's cell do not have a shower and have to wash in basins.

For very good reason, and the Special Rapporteur agrees with them, the prisoners perceive the close proximity and evident lack of hygiene as degrading and an affront to their dignity. They all complained to the delegation about this in a manner that left no doubt about how much they suffered from this treatment. This situation is a violation of their right to dignity.

The Special Rapporteur recommended that the police authorities should find means to repair all police cells and bring them up to basic international standard.

*Electricity*

In most **prisons**, the electrical installations seem to be in a good state. The courtyards are lit all night long, whereas inside the cells, the lights are switched off at 9:00 pm (Windhoek). The lights are switched on again at 5:00 am. However, the delegation noticed that there was no bulbs in some cells in Omaruru prison (juvenile and women's sections). In some institutions the inmates are studying and therefore the lights are on for a longer time (10:00 pm in the Walvis Bay juvenile section in Oluno prison).

In **police** cells, electric equipment is often damaged or purposely disconnected to avoid the risk of electrocution or fire. Consequently, the prisoners live in darkness for a considerable part of the day (Wanaheda police station). Elsewhere, the lights are switched off at 9:00 pm and are switched on or come on again at around 5:00 am.

#### *Devices for emergency calls and for communication*

The cells and various prison buildings are equipped with interphones linked to a central panel that allow both inmates and staff in the central office of the prison and in each section to communicate during the night in case of emergencies and during the daytime (calling prisoners to the visiting rooms, staff, etc.).

However, the interphones in the cells and dormitories are not always in working order (Walvis Bay, Oluno, Hardap), yet they represent the only means of ensuring that a detainee's call for help during the night is not left unanswered. They are all the more necessary as the architecture of the buildings themselves makes natural communication between the various units impossible. Each section is locked and remains isolated when night falls.

In **police** stations, cells are not equipped with any calling or communication system apart from hammering on the doors or during the rounds made by staff. Many inmates have complained that staff do not answer their calls when there are problems at other times than during the rounds.

#### *Kitchens*

**Prisons** are equipped with costly modern, professional kitchens adjoining the refectories that are well equipped and maintained. Each prisoner receives a spoon and his meal on a metal plate. However, some prisoners complained that the spoon handle was too short, making it difficult and humiliating to use. In E. Nepemba centre, which is under construction, the present kitchen is equipped only with a rustic wood fire and is located in a very old building. A new and modern kitchen is planned and should be built by 2003, at which time construction of the centre should be finished.

**Police** stations usually have only small inadequate facilities, often partly unusable. The utensils (spoons, plates and pots) are insufficient and in a bad state. The storerooms are inadequate. The whole premises are often badly laid out and dirty. The Special Rapporteur recommends that the police authorities should find the means to repair all the kitchens and bring them up to standard, improving general maintenance, materials, utensils and food storage methods.

#### *Refectories*

**Prisons** have large common refectories or smaller refectories located in certain sections (women, juveniles). Most of them are equipped with rows of long tables with benches or stools. The prisoners go there for their meals in turns by section. On the day of the delegation's visit, some contained no furniture and were not in use, and the prisoners took their meals in the courtyard (Omaruru).

There are no refectories in **police** stations. Meals are prepared in the kitchen and taken to prisoners who eat in their cells.

*Open air facilities*

In most **prisons**, prisoners had basic access to the courtyard adjoining their dormitory. This courtyard is not very big. It is built in a way (with an inaccessible central square) that does not allow many physical or leisure activities, except for walking and sometimes gardening on a very small scale. Prisoners sometimes get a chance to take part in sports (usually football and netball) outside the prison buildings. At Windhoek prison, these activities were cancelled in 1998 for security reasons, except for netball for the women in winter. At Omaruru prison, the courtyards are extremely small considering the large number of prisoners. Prisoners exercise all at the same time, which means there is not much space for each one. Exercise could be taken in turns (one or two cells at a time) in the most crowded sections.

In **police** stations, prisoners only have access to the courtyard next to their cell. However, the courtyard itself is occupied by inmates for whom there is not enough room indoors. Prisoners without access to any other space in the open air are confined night and day in the same cramped space, without any real possibility of physical exercise.

*Religious premises*

There are no proper places for worship in the **prisons**, but inmates have access to meeting for prayers or religious activities. Masses are also celebrated. Assemblies of people are restricted for security reasons. Inmates in some sections meet in the refectories but cannot join others from other sections belonging to different categories of prisoners.

There are no places of worship in **police** stations.

*Visitors' Rooms*

The various sections of the **prisons** (adults, minors) are equipped with modern visitors' rooms with partitions and interphones. Adjoining these visitors' rooms there are waiting rooms with toilets for the visitors. However, in some establishments, the interphones are faulty (Walvis Bay, Hardap). This makes communication extremely difficult. The prisoners and their visitors have to speak loudly to be heard and understood on the other side of the partition, the sound level may be very high and the lack of privacy embarrassing and discouraging. This situation has brought complaints by inmates and staff. Convicted prisoners have complained about crowding of the visitors' rooms on Saturdays and Sundays, the days which are reserved for visits to convicted prisoners.

Some prisoners (category A) have the right to receive their visitors in an open room with benches and chairs where families may meet for the duration of the visit (« contact visits »). This is commendable as it brings a homely atmosphere to the inmate.

In **police** stations, there is no space reserved for visits. Inmates receive their visitors in the police premises or outside under police surveillance.

*Library*

In most establishments, prisoners have access to a library with books in English and Afrikaans, mostly rather old, and some magazines. It should be noted that the number of books is limited (Oluno) and inmates complained of the lack of variety and requested new replacements.

*Punishment Cell*

Prison law determines that individual cells may be used for disciplinary purposes. In practice, they are rarely used for this purpose and serve mostly for administrative confinement or separation (in Walvis Bay, juvenile prisoners are held in individual cells, as well as former police officers). However, a juvenile in Omaruru prison was detained for a day in solitary confinement and deprived of food for disciplinary reasons. The Special Rapporteur condemned this act which amounts to a violation of the inmate's freedom of movement and the right to food.

In police stations, disciplinary measures are limited and do not include isolation in a punishment cell. However, prisoners in Windhoek police station complained of having been chained to bars in the open air as punishment. This act was also condemned by the Special Rapporteur as degrading and inhumane.

*Medical Facilities*

Sanitary training courses exist in most big prisons. They are directed by paramedical staff (nurses and technical health workers) and, on the whole, have the equipment, pharmaceutical products and consumables necessary for their operation.

Prisons that do not have sanitary training and police stations have recourse to local hospitals for inmates' health care.

*Clothing and Hygiene*

The **prison** administration supplies the inmates with uniforms – trousers, shirt, pullover, underwear, sometimes shoes and socks for the men; dress, pullover, underwear, shawl, shoes and socks (or tights as in Oluno prison) for the women. The prisoners did not complain about the provisions made for them in this respect with the exception of a few who had to wear their own shoes and did not have a pullover (Section F at Windhoek, Omaruru prison) and sometimes lacked the complete uniform (Hardap prison), whilst the prisoners in other sections of the same prison received a complete uniform, socks, shoes and shoe polish once a year. Some complained of not having trousers, but only shorts (Oluno prison). The women complained of not being given underwear and having to wear their own (Oluno prison). The prisoners in Hardap prison complained of having their personal clothes confiscated on the 15<sup>th</sup> of June 2001 for security reasons. Since then, they have only had one uniform and no nightwear. They also complained about sometimes having to buy a new uniform to replace their own worn out from one of the inmates working in the storeroom. The prisoners admitted that sometimes minors without clothing were driven to prostituting themselves in order to get some clothes. People detained in police stations wear their own clothes.

The level of hygiene and maintenance of the premises was good. The delegation congratulated the prison administration and the prisoners and encouraged them to maintain the standards of cleanliness exhibited on the day of the visit. The prisoners clean their living space daily. They all have access to a laundry, a linen room and washing lines in order to wash their clothes and personal effects. In all the sections visited, the delegation was satisfied that the prisoners received soap and toilet paper, at least once a month (every two weeks in Omaruru prison, three times a month in Oluno prison – women's section, once a month in the men's section, 10 rolls of paper for 30 persons every three weeks at Hardap prison), toothpaste (once a month at Walvis Bay, every six months at Oluno, every three months elsewhere, a tube for four prisoners every month as a rule, but sometimes nothing over six months in Hardap) and shaving material every three months. The women are given sanitary towels. They also had hairbrushes. Detergents and wax are provided to

clean the premises and toilets, as well as cleaning implements (floorcloths, brooms) even though these are sometimes very worn out. Some prisoners complained that the only materials they had were rags and floorcloths (Oluno prison, women's section).

The delegation did however notice some faulty toilet flushes (Windhoek prison – section F, Walvis Bay, Oluno – sections G, P and Q) which caused both floods and noise. Likewise, problems with drainage or leaks mean that blankets are used to stop the flow of or mop up water. Some bathrooms had to be closed (Walvis Bay). The juveniles in Oluno prison complained that they sometimes had to unblock toilets by hand without using gloves. In some institutions, the urinals were out of order and prisoners urinated in the shower (Walvis Bay). Prisoners complained about not being given toilet soap (Windhoek), about having to request it (Omaruru), about not having washing powder and cleaning utensils (Windhoek), about being given detergent only when control or delegation's visits were announced (Hardap) and about not being able to get rid of lice (Windhoek, Walvis Bay, Oluno). The Special Rapporteur noticed that in some prisons, the premises were infested with cockroaches (section N of Oluno).

The pressure exerted by the increased prison population could have disastrous effects on the level of upkeep, hygiene and security. The authorities should therefore concentrate on hygiene in the future, especially when prisons receive those prisoners on remand who for the time being are being held in police stations. The authorities should also assure that supplies for personal hygiene and cleaning are supplied regularly and are the same everywhere as uniformity is very important.

In cells and courtyards in **police** stations, as well as in the rooms being used as kitchens, hygiene leaves a lot to be desired. Overcrowding, the general state of police premises, the lack of space, absence of soap, washing powder, and products and materials for the upkeep of the prison cause anger among prisoners. The same happens as with their conditions of detention: the absence of organisation, and the irresponsibility and unwillingness of police officers makes cleaning and the maintenance of hygiene extremely problematic. If it was not for their families, prisoners would hardly receive anything (neither soap, nor washing powder or toilet paper). The inmates in the police stations of Rundu, Mariental, Walvis Bay and Ondangwa mentioned that they receive occasionally a roll of toilet paper and a cake of soap but are forced to share it. Some prisoners at Omaruru station receive two cakes of soap and two rolls of toilet paper twice per month. The police officers at that station blame the prisoners for wasting toilet paper by burning it and using it to keep up a small fire along a wall to light their cigarettes. As blankets and mats are dirty when distributed, police cells are all in an appalling and intolerable state of filth: refuse of all sorts lying about on the floor, stagnant water, blackened walls, a stench of urine and faeces, dirty clothes and bedding infested with lice, fleas and cockroaches, dirty showers and toilets, etc. At Wanaheda police station the women complained that they had to beg the officers for floor-cloths to wash the floor, the under-age inmates complained that they do not receive enough soap, do not have combs and have to pay to get a haircut. Walvis Bay police station was the only police station which seemed to have been cleaned prior to the visit of the Special Rapporteur.

The Special Rapporteur urged the authorities to take immediate steps to rectify the problems found and to put an end to a situation that constitutes both an affront to human dignity and a real danger for people's health, both prisoners and staff, who live within this environment. The staff in charge should be enjoined to supply the products and materials that prisoners need regularly, and as often as necessary. Prisoners should be made to clean their cells regularly. All police cells, blankets and



mattresses should be thoroughly washed, treated with insecticide and disinfected regularly in order to protect prisoners from infections.

### *Bedding*

The prison administration supplies each detainee in **prison** with a bed, a foam mattress, one or several blankets (depending on the season and on the temperature), a pillow and sometimes sheets and pillowcases. At the E. Nepemba centre, prisoners may request a mosquito net. However, in the dormitories, some prisoners sleep on mattresses laid out on the floor at night and folded up during the daytime (section N of Oluno, section B of Grootfontein prison). Inmates at section F of Windhoek prison do not have pillows. The inmates of Hardap prison complained about the lack of blankets in a good state, and of suffering from cold in winter. The women in the central prisons of Windhoek and Omaruru complained of having to sleep on the floor when there were too many of them.

In the **police** stations, overcrowding and lack of space are so prevalent that it is impossible to use beds, including bunk beds. Prisoners share a limited number of blankets and mats. New arrivals are not systematically given a sleeping space or bedding. Sometimes they have to come to an agreement with their fellow -prisoners. Blankets and mats are not systematically washed before redistribution. At Grootfontein police station, detainees complained about the limited number of blankets given to them. It was alleged that officers covered their cars with blankets intended for the prisoners.

### *Food*

In the **prisons**, food is supplied by the administration, which gets its supplies from prison farms and private producers. Prison law allows prisoners to order food from outside the prison. But for reasons of security, the exercise of this right has been suspended for convicted prisoners and limited to those on remand, as staff claim that searching baskets of food is difficult and dangerous. Muslim prisoners, however, are allowed to receive food during Ramadan. Prisoners on remand in Grootfontein prison receive food from outside prison. Menus and quantities are established by a nutritionist <sup>5</sup> varying in principle according to gender, age and state of health. Babies and infants detained with their mothers are supplied with a special diet. The inmates take three meals: breakfast at 7:30 am, a light lunch at 11:00 am and dinner at 3:00 pm. During Ramadan, the Muslim prisoners are allowed to take their meal at night. The meals are prepared by inmates who work in the kitchen, but have not received training for this purpose. The Special Rapporteur was very surprised to hear that HIV positive prisoners were not allowed to work in the kitchen. She advised that discrimination against people suffering from HIV/AIDS is not allowed.

In principle, inmates receive bread, porridge, sugar, margarine, tea, powdered milk, meat or fish, vegetables and salt every day. They get jam once a week and oil twice a week. The inmates also receive several meals composed of a mixture of beans, maize and peas. Children detained with their mothers as well as the sick prisoners, may, on doctor's prescription, receive fresh fruit, more milk and eggs. Sodium free diets are also available for prisoners suffering from high blood pressure. The delegation also noted that prisoners who work are allowed to request additional rations (Windhoek). Food is generally well cooked in hygienic conditions and tastes good. The Special Rapporteur tasted it and was satisfied with the quality.

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<sup>5</sup> See the attached table of weekly rations.

In some establishments, prisoners complained about the quantity and quality of the food they received. Thus, the women prisoners in Windhoek complained of receiving only two meals per day, those in Oluno prison and in Hardap Prison complained of going hungry. At Windhoek prison, a one-year-old baby detained with the mother was only given porridge to eat. Another one-year-old baby whose mother was detained in Walvis Bay prison did not receive any appropriate food. The women would like to prepare their own food. The men informed the delegation that their food was sometimes undercooked, and that they were only given two meals a day and vegetables only once a month. The prisoners at Walvis Bay mentioned running out of stock sometimes and that sometimes porridge was the only food they were given for a period of one month. All the prisoners met by the delegation complained that the porridge was too liquid and sometimes contained sand, small stones and dirt (which was confirmed by the delegation). Foreign prisoners also complained that they were unable to adapt to the diet consequently they suffered and lost weight (Windhoek and Walvis Bay prisons). The prisoners at the E. Nepemba centre complained that the food was not always kept in good conditions and that the cooking utensils were usually dirty. Prisoners in Hardap prison mentioned that the utensils in which the food was served were worn out and dirty, as they were only rinsed out with water. They informed the Special Rapporteur that in order to obtain more food, tobacco or even drugs, some prisoners, including some minors, were driven to prostitution. It should be noted that the ombudsman's office is dealing with a number of cases of problems relating to food and has started an enquiry.

In the **police** stations, food is generally supplied by the administration, cooked by employees and the menus are prepared by a nutritionist. It consists of bread, coffee, porridge, sauce, occasionally some meat or fish are served (once a week in Omaruru, sometimes in Mariental). Prisoners are supposed to have three meals per day and are allowed to receive food from outside the prison as long as the food may be searched or is uncooked.

Some prisoners complained of not receiving food for a whole day (this takes place in Rundu roughly once every two months) or an insufficient quantity of it, not being allowed to receive any from outside prison. Prisoners at Rundu police station complained that they were no longer allowed to receive food or visits from their families over the last five months, although the food rations supplied by the police authorities were highly insufficient and inadequate. Furthermore, they mentioned that the pots used for cooking and serving the meals were so worn out that they leaked or were unusable. It should be noted that sometimes the state of food containers is caused by the way they are handled by prisoners. At Mariental, prisoners use them to hammer on metal doors. The inmates at Walvis Bay police station explained that the only food allowed from outside the prison was whatever the officers were willing to buy if paid to do so. Several inmates complained that some officers kept the money and did not buy the food requested, others complained that the officers helped themselves to the food brought by their families (Grootfontein). Some prisoners in Omaruru police station complained of not receiving adequate food when sick. The prisoners in Grootfontein police station mentioned only being given meat on the days visitors were expected. They had received some on the day of the Special Rapporteur's visit, but it was the first time in three months. A woman detainee in the same station complained about not having any money and not being able to telephone her family to ask for help in order to buy special food for her baby who was in custody with her. The delegation was told that in Mariental meals are badly cooked and insufficient and that sometimes prisoners find dead cockroaches in their food.

*Contacts with the outside world*

In **prisons**, the visiting regime differs according to the rating of prisoners. Those on remand have the right to receive visits from Monday to Friday, from 08:00 am to 12:00 am. The regime for convicted prisoners is in accordance with their grade. They may receive visitors on Saturday and Sunday, as follows:

Grade	Number of visits	Number of persons at each visit	Length of the visit
A	3 per month	2	45 minutes
B	2 per month	2	30 minutes
C	1 per month	2	30 minutes
D	1 every two months	2	30 minutes

Grade A prisoners are allowed to receive their families in a room without any separation between them (contact visit). Prisoners on remand held in prison do not have the right to receive their families whereas they would be allowed to do so if they were being held in a police station.

It should be noted that some inmates no longer receive any visits as their families either tire of coming (especially for prisoners with long term sentences), live too far away (Walvis Bay prison, remand prisoners in Grootfontein prison, juvenile detention centre E. Nepemba) or have sometimes been bullied by the prison staff and do not want to come back (Hardap). The authorities have been forced to relax the rules in order to facilitate visits when families come from far away. As a result convicted prisoners at Omaruru and Walvis Bay prisons may exceptionally receive visits on days other than the prescribed ones. However, some inmates at Omaruru and Oluno complained that their visits were only 5 to 15 minutes long instead of the regular 30 minutes. Several prisoners complained about how far away the prison was from their homes (Walvis Bay, Windhoek and Oluno prisons). In general, logbooks are kept in which the date and length of visits, etc. for each detainee are entered.

Prisoners also have the right to write and to receive letters. The extent of this right however depends on the prisoners' grade. Only the letters sent to the Ombudsman's office are not censored. Inmates may send their letters without paying for postage to any address in Namibia. Foreign prisoners complained about not having the means to pay for stamps to send their letters abroad. They also complained about being at a disadvantage regarding contact with the outside world as the postal services in their countries do not always work and they are not allowed to call their families by telephone even when they have the means to pay for the calls. Some prisoners in Mariental, Walvis Bay and Oluno prisons alleged that their letters to the Ombudsman were sometimes opened and read by others. This allegation was on the basis that they suffered reprisals after having written the letters. The inmates have the right to receive newspapers from their families (two per month at Walvis Bay, one per month at Oluno). Only grade A prisoners are allowed to keep a radio in prison. The fact that the others do not have this right works against maintaining contact with the outside world. It would be relatively simple to enable all the prisoners to listen to the radio through an interphone system. It should be noted that at Omaruru prison the radio was broadcasting through interphones during the Special Rapporteur's visit. However, prisoners said that it was a rare occurrence which would probably stop after the Special Rapporteur's visit.

In **police** stations, inmates have usually the right to receive visits on Sundays and Wednesdays at Omaruru Police Station, all week long at Ondangwa Police Station, where families come mainly on Saturdays, and also all week long at Mariental police station since the arrival of new staff. In principle, prisoners have also the right to call their family or lawyer by telephone if they have the means to pay for the call or to buy a telephone card. It should be noted, however, that the right to communication is not applied everywhere sometimes being subject to the whims of officers. Officers at Omaruru Police Station stated that sometimes there were not enough staff members to safely allow a detainee to call his/her family by phone or answer a phone call. At Grootfontein, visits are sometimes restricted due to shortage of staff. On the day of the visit to Rundu police station, the Special Rapporteur was informed that for the last five months remand prisoners had no longer the right the right to receive visits or to telephone their families. Among other things, this resulted in inmates be refused bail. The only right that was retained was the right to write letters. Women prisoners at Wanaheda police station and the prisoners at Walvis Bay Police Station complained about only been able to be with their visitors for a few minutes and under difficult conditions (there is no visiting room). Prisoners at Ondangwa and Grootfontein police stations complained about being prevented from communicating with their families by telephone, even when they had their own telephone cards which means that they could not ask their families for money to pay for bail.

*Leisure, exercise, work, programmes and access to education*

Generally, all prisoners – men, women and juveniles – complained about:

- the lack of exercise: the lack of space in the courtyards restricts the possibilities of organising sports, or even of doing physical exercises. Sporting activities outside prison are limited. In Windhoek Prison women play netball outside prison once a month during the winter; in Walvis Bay and Oluno prisons inmates are allowed to play netball and volleyball occasionally;
- the impossibility of working and earning some money and of practising the skills learnt outside prison;
- the absence of leisure activities (in some prisons, prisoners were allowed to watch television in the evening until 9 pm during the week and 10 pm at the weekend: E. Nepemba) or contacts with the outside, especially through regular access to newspapers and radio;
- the lack of educational programmes or professional training: at the moment, the only activities that juveniles in E. Nepemba juvenile centre have access to, are cleaning and literacy classes. This will continue until 2003 when the building work is finished and the centre is up and running;
- that only prisoners sentenced to more than three years of prison have access to the library, and the lack of renewal or diversity in the publications available;
- the lack of programmes to prepare prisoners in advance for their release.

The inmates in Hardap prison explained that in this context, homosexual activities end up being considered acceptable by the inmates.

The prison administration blamed the lack of programmes on overcrowding and the lack of qualified staff, especially of social workers.

*Work*

Some inmates work. These are a minority in the big prisons, yet some of these establishments are considered as being rehabilitation centres (Oluno). In E. Nepemba juvenile centre, the high percentage of workers is explained by the fact that the centre is under construction and most of the inmates are adults who are engaged in the construction of the centre. Divundu is a prison farm that has several projects in which up to 275 people will be able to work in the long run.

Prison	Number of workers	Percentage of total prison population
Oluno	74	10.8%
Windhoek	200	15.6%
Hardap	200	20.3%
E. Nepemba	83	65.8%
Divundu	218	94.7%

Prisoners who work have a working day of 7 to 10 hours daily. They are usually employed in prison activities (cooks and assistants, cleaners and teachers in the educational programmes), in prison industrial workshops (building sites at Omaruru and E. Nepemba Centre, or in workshops that carry out painting, sewing, mechanical, electrical, metallurgical, brick-making, plumbing and carpentry activities in Windhoek, Oluno and Divundu prisons) or outside the prisons (agricultural activities in Oluno, Divundu, Hardap and Walvis Bay to a lesser extent, or as help for temporary private employers who use prison labour). In general, the prisoners who are allowed to work are those with short-term sentences, those with appropriate qualifications or those who are reaching the end of their sentence and who the administration deem to have had good behaviour. Convicted prisoners who have to re-attend court on other charges are not allowed to work.

Prisoners who work in prison programmes receive wages calculated on the basis of their qualifications, professions, prior experience, etc. The inmates who work outside prison as prison labour are not paid. The prison administration charges their employers 4 NAD per person per day.

The Special Rapporteur found that the work and safety conditions could be hazardous for the prisoners and encouraged the authorities to implement all the required standards of hygiene and safety (Windhoek, E. Nepemba) and to supply all the necessary safety equipment (goggles, gloves and safety boots, appropriate work clothes, covers and guards for machinery, etc.).

It should be noted that in many establishments, prisoners are allowed to set up small craft industries (Walvis Bay, Oluno, Windhoek, E. Nepemba). The Special Rapporteur encouraged these initiatives and praised the prisoners' talent.

*Education*

Most prisons provide literacy classes. Classes at primary and secondary level recognised by the Ministry of Education are taught from April to September. The teachers are prisoners. Prisoners who study in prison sometimes find it difficult to sit their exams outside (transport problems). It should be noted that in Namibia education is not free, including for prisoners. Some prisoners complained that it is

impossible to undertake high-level studies in prison without the means to pay for distance learning.

Year 2001 Classes	Overall number of students at all levels	Percentage of the prison population
Windhoek	87	6.8%
Divundu	22	9.5%
E. Nepemba	16	12.6%
Hardap	147	14.9%
Oluno	136	19.8%

Prisoners who work generally do not benefit from any theoretical training with the exception of Divundu where 32 prisoners received theoretical training and practice in 1998-99 and of Windhoek central prison, where some theoretical training was given.

#### *Other programmes*

Involvement in religious activities has been on the increase since 1996 and is very much encouraged by the prison administration.

One-off information and awareness raising courses are given in most prisons on the following subjects: HIV/AIDS, alcoholism, first aid.

The Special Rapporteur recommends that high priority be given to developing satisfactory activity programmes for prisoners. This is crucial for the well-being of both remand and convicted prisoners and for rehabilitation purposes.

The Special Rapporteur wishes to encourage the authorities to pursue their efforts and to accelerate the development of activity programmes for juvenile prisoners, at Nepemba Rehabilitation Centre and elsewhere. Although the lack of satisfying activities is harmful to any prisoner, it is even more so in the case of juveniles who particularly have the need to expend physical energy and benefit from intellectual stimulus. A complete programme of educational activities, professional training, leisure and other constructive activities must be set up for juveniles deprived of freedom. Physical education should represent an important part of this programme.

Prisoners serving long-term sentences should have access to a wide range of varied and satisfying activities (work which should preferably contribute towards professional training, education, sports, recreational and joint activities, permission to go out in order to develop family ties). Furthermore, prisoners should be able to exercise a certain degree of choice regarding the way they pass the time. This choice would stimulate their sense of independence and personal responsibility. Additional measures should be taken to give meaning to their imprisonment, more precisely, the setting up of individualised programmes of treatment and appropriate psycho-social support are important factors to help these inmates face their period of imprisonment and to prepare for their release. Furthermore, the negative effects of institutionalisation on convicted prisoners serving long-term sentences would be less pronounced. Prisoners would be better prepared for their release if they were able to maintain contacts with the outside world.

*Open air and restrictions*

In **prison**, due to lack of sufficient staff, the time spent outdoors exercising is very limited. The regime changes slightly from one prison to another.

The inmates in Windhoek prison come out of their cells for breakfast around 7:30 am. Those who do not work return to their cells at around 8:30 am. They come out again for 30 minutes during the morning, and then from 2:00 to 3:00 pm, at which time they eat their dinner before returning to their cells until the following morning. Juveniles are out of their cells from 7:00 to 12:00 am, and then again from 2:00 to 3:00 pm. At Oluno prison inmates return to their cells earlier on Saturdays and Sundays (2:00 pm). It should be noted that inmates' timetables for leaving their cells may vary a little from one prison to another, but on the whole those who do not work spend an average of only 2½ hours outside their cells. Those who work leave their cells at around 7:30 am and return at 3:30 pm after dinner.

In **police** stations, prisoners may go to the small courtyard next to their cell, but are never allowed to leave their section except for visits or when they have to attend court. On the other hand, because there is not an adjacent courtyard, women prisoners in the police station of Wanaheda never leave their cells. The police officers could remedy this situation by using a small closed courtyard with bars near the women's cell, which at the moment is only being utilised for loading and unloading trucks.

*Rules, discipline and sanctions*

In principle, the prison law provides for prisoners to be informed verbally and in writing about the internal rules, discipline and sanctions. Information is given to new arrivals and repeated during small meetings by the staff (once a month at Walvis Bay since 2000). Furthermore, a small new brochure containing information regarding rules, timetables, internal organisation, etc should be given to each prisoner. At Windhoek prison each cell has a copy of the prison law. A summary of the prison law with information regarding offences which can result in punishments is sometimes on display on the cell doors (juvenile section at Walvis Bay, Omaruru prison, E. Nepemba Juvenile Centre). In spite of these procedures, many prisoners still complain that they have not been sufficiently informed (Walvis Bay).

In the case of a breach of prison rules, the prisoner is first heard then an inquiry is conducted followed eventually if found guilty by punishment, according to the prison law:

- Loss of reduction in sentence
- Reduction of privileges and earnings
- Solitary confinement, for a period which must not exceed 14 days. After that, a decision to maintain solitary confinement can only be made by the Commissioner of Prisons or by the Minister himself. Solitary confinement is no longer used as a disciplinary measure, but the Officers in charge in Walvis Bay, Oluno and Omaruru informed the Special Rapporteur that they occasionally have recourse to it. The female prisoners at Oluno prison confirmed that individual cells were used to isolate and punish. The regime of detention in solitary confinement should not involve any additional punishment. Meals should be served as usual, as well as visiting rights, exercise time, etc. Yet, prisoners at Omaruru and Oluno prisons have testified that they were kept in solitary confinement with shorter rations for 10 days as a disciplinary action. Women at Oluno prison stated that those kept in solitary confinement did not have the right

to see their visitors, were not allowed to leave their cell, and were only allowed to keep their bible and sponge bag.

Prisoners on remand in prisons are subjected to the same disciplinary regime as convicted prisoners.

Handcuffs are only used when prisoners are being transferred to the courts and only if they have tried to escape before. Usually no ill treatment is inflicted, however prisoners at Omaruru, Oluno and Walvis Bay prisons complained of having been beaten by a prison officer.

Some prisoners complained about having to suffer collective punishments. This happened sometimes, for instance, when one of them left the queue for the refectory at Oluno prison.

In **police** stations, the inmates complained that they did not know the rules nor their rights and of being constantly at the mercy of the whims of the guard. They complained of being chained or handcuffed for disciplinary reasons (see paragraph on concerns). If a prisoner seriously breaches the rules of the police station, he may be sued, and according to the authorities this happens quite frequently.(Ondangwa).

#### *Complaints mechanism*

In **prison**, prisoners may complain and request an audience by means of a logbook of complaints which usually circulates every morning in each section, or directly to the Officer in charge. Depending on the kind of complaint, an officer or the Officer in charge will deal with it, hearing the inmate and taking the necessary measures. However, a great number of complaints are regarding the officers themselves. Some prisoners feel that their complaints are not resolved (Omaruru prison), are not heard (Oluno and Grootfontein prisons), and that staff push the responsibility for decisions continually on to each other and end up not making any decisions (Walvis Bay prison). Prisoners at Grootfontein also complained about having been intimidated and threatened when they complained. Those from Hardap prison stated sometimes losing their privileges when making a complain and also having to resource to violence in order to try to be heard.

At Omaruru prison the delegation noted that according to the logbook, there has been a total of 1590 complaints between 28 May 2001 and September 2002 (date of the visit), of which 300 were between August 2001 and September 2002. Of these 300, around 80 had been dealt with (i.e., 25%), 20 of which had been resolved (6%).

At Oluno prison, 15 complaints have been entered since the 1<sup>st</sup> of August 2001, 10 of which were dealt with. The entries do not make it clear if the problems were solved although the officials assured the delegation that it was the case.

Some inmates complained that their committal order had been mislaid and that nothing was done about it.

At Walvis Bay prison, some prisoners complained that they had suffered reprisals (solitary confinement, banning of cigarettes, threats of transfer), were beaten if complained (suffering insults and racist remarks in particular), or if they refused to eat their food. A detainee said he had been beaten in August 2001 for having written a letter to the Ombudsman and he is now afraid it happened again if he tried to complain again. Another inmate reported serious facts concerning the death of a prisoner which was at the time being enquired about by the Ombudsman's office, this enquiry allegedly being the reason for psychological pressure and threats against him by the staff. The Ombudsman's representative who was present during the visit promised to take all the necessary measures to protect this prisoner as well as another witness to the same facts.



Prisoners also have the right to lodge complaints against the police and demand reparations. The NGO *Legal Assistance Centre* helps prisoners deal with these matters and gives them legal assistance. Some prisoners say that they are always prevented by the staff from exercising this right (Walvis Bay).

Prisoners have the right to appeal against their conviction, but many complained about the slowness of this procedure and about the lack of legal assistance.

The inmates can also write to the Ombudsman's office or meet his representatives when they visit prisons. However, many complained that their letters did not always reach the Ombudsman and were secretly censored to see if they contained information regarding prison staff (Walvis Bay). The inmates also complained about the administration staff listening in on their meetings with the representatives of the Ombudsman (Walvis Bay, Mariental).

In **police** stations, prisoners have in theory the right to transmit their complaints to the officer in charge via a complaints logbook. However, at Rundu police station, for instance, the delegation found that hardly any complaints had been entered for several months, and that the logbook only mentioned the day, each team of guards and the fact that there was "nothing to report". Yet, when listening to prisoners, the Special Rapporteur came across numerous complaints and recriminations, particularly with regards to food, the absence of visits, living conditions, etc. Many inmates said that they were not allowed to complain to the police officers (Walvis Bay police station), that the complaints were ignored (Grootfontein) and of being threatened with reprisals (transfer to solitary confinement) by prison officers on duty if they complained or spoke to the Special Rapporteur (Mariental).

#### *Relationship with staff and between prisoners*

There are major differences in training and knowledge of the **prison** law, behaviour, management and concept of prisons within the prison corps. Some of the prison staff were already doing these jobs before the country's independence in 1990. The others were recruited when the Ministry of Prisons was created and underwent a 3-months training course. In the year 2000, 500 veteran soldiers were recruited by the prison administration. These people do not always have a vocation for the task, but are simply looking for a job and are not very motivated to do this kind of work. There is no continuous training system or recycling courses. There are specific courses in management and human rights for the administration executives. Some international organisations such as the International Committee of the Red Cross (ICRC) or the United Nations also organise short traineeships in human rights issues, humanitarian rules in relation to detention and staff behaviour. The budget allocated for training is NAD 800,000 (which currently includes the construction of a new training centre in Omaruru). The minimum level of education required to integrate the prison corps is grade 10. Monthly wages<sup>6</sup> for prison guards is in the order of NAD 2,500, for prison directors it may vary between NAD 6,000 and 12,000 and for Commissioners is around NAD 18,000.

Generally, the delegation heard few allegations of physical ill treatment of prisoners by higher level prison staff in the prisons visited. However, the situation is different as far as prison guards in particular are concerned. Some of these are veteran soldiers and/or lack the necessary qualifications for their job. They often speak Afrikaans or Oshiwambo and very little English, which is a problem when communicating with the prisoners. Others are rather resistant to change and

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<sup>6</sup> The minimum salary in Namibia varies from 400 to 600 NAD, but does not include benefits in kind.

sometimes create problems for the prisoners and the administration. The methods used do not favour the development of a constructive spirit and trust within the prison. Some prisoners complained of the existence of informers among them (Windhoek prison) and that some of the staff were involved in drug trafficking, bringing in or allowing the admission of drugs in return for money (Hardap and Windhoek prisons). They also complained about suffering discrimination and arbitrary practices. Some prison guards refused to speak a language that the prisoners understood and insisted on speaking in Oshiwambo, not listening to the prisoners who would not or could not speak that language (Oluno, Hardap).

It is important to note that the number of complaints against the staff has increased considerably (56%) between 1999 and 2000. A prisoner died in suspicious circumstances in Walvis Bay prison. According to the explanations of a fellow inmate who witnessed the scene from the window of his cell, the deceased prisoner had a fight with one of his fellow prisoner, after which he was seriously beaten by the guards during the night and isolated in an individual cell. He was found dead the following day. The witness, having been threatened by the guards, was not prepared to testify before the police. An enquiry is under way and the Ombudsman is dealing with this case. The Special Rapporteur is anxious to have access to the conclusions as soon as possible.

**Police** officers receive training in the Police College, but are in reality not prepared to take care of prisoners. Some have participated in human rights seminars, and the police authorities are trying to raise extra funds to improve training in that field. The Special Rapporteur recommends that human rights principles be integrated in practical professional training for the management of high risk situations, such as questioning, interrogation of suspects and the management of persons in detention and those with difficult behaviour.

#### *External and internal control*

The prison law provides a mechanism to monitor prisons outside the prison administration. This law effectively determines that the Supreme Court and High Court judges, the ministers, the permanent secretary to the Ministry of Prisons, and parliamentarians should be visiting justices *ex officio* who are mandated to inspect all the prisons in the country and make recommendations to the prison directors. Other persons appointed as visiting judges *ex officio* are governors, who can visit prisons in their region. Magistrates are allowed to visit cells under their jurisdiction, and the members of regional councils may visit those in their constituency. Furthermore, the Minister of Prisons may appoint a member of the public services as visitor during a given period.

In practice, this mechanism does not work. The Special Rapporteur discovered that the prisons have never been visited by visiting justices since the mechanism was created by the prison law of 1998.

There are mechanisms for internal control which by their very nature are not independent, namely that the Commissioner of Prisons, the Inspector of Prisons and the information services may effectively inspect the prisons.

It should be noted that the Ombudsman and his representatives can also visit the inmates and speak to them in private about their problems. This seems to be the only independent control mechanism that actually works in Namibia at present.

The Special Rapporteur urged the police authorities to put in place and implement external control mechanisms for police stations. The Special Rapporteur wishes to underline the importance of external control on detention in prisons and police

stations. These should be strengthened and all the mechanisms provided for by law in this matter should be made operational and effective.

### *Health*

The Chief Medical Officer of Prisons, who is an orthopaedist by training, works as a General Physician. He is based in Windhoek and holds consultations twice a week in the prison of that city.

The pathology is varied. The annual report on prisons for the year 2000 indicated that it was dominated, in order of importance, by: high blood pressure, respiratory diseases including tuberculosis, AIDS and mental illness. For the year 2000, there were 311 prisoners with the HIV virus, i.e., 115 new cases in that year alone. Of the 2,600 prisoners who recently took the HIV test, 458 had positive results.

Cases of mental illness are also constantly increasing in Namibian prisons. In fact, at the end of 1999 there were 43 cases of prisoners suffering from mental illness for all the prisons. On the date of the visit of the Special Rapporteur's delegation there were at least 222 prisoners suffering from mental illnesses and in hospital in the only clinic near Windhoek prison – Dr Japhet's (Legal Psychiatrist seconded by the Ministry of Health).

The delegation was generally satisfied with the manner in which the medical files of the prisoners were kept. An individual medical file is opened for any sick person who attends the Prison Clinic or who has been taken to hospital. Also, an individual therapeutic card is given to each prisoner who comes for consultation for the first time. Statistics on morbidity and mortality are also well maintained. In the year 2000 there were 17 cases of deaths in prison. The same number was also registered in 1999. The available statistics in the prisons visited report a dozen cases of deaths in those prisons for the period from 1 January to 30 August 2001.

All the medical services of prisons are rated as 3<sup>rd</sup> category (ABC) and are therefore only supplied with medications for unrestricted use. The Chief Medical Officer expressed his desire that at least the medical service of Windhoek, where he works, should be authorised to handle 2<sup>nd</sup> category medications, enabling him to care for a larger number of pathologies.

All the Prison Clinics receive enough medication and have the medical equipment they need. However, the overcrowding that characterises nearly all Namibian prisons nowadays has also repercussions on their medical services, which sometimes houses twice as many patients as their capacity. Windhoek High Security Prison was, for instance, supposed to receive all prisoners who are HIV positive or suffering from AIDS. Currently however, this is no longer possible, given that the number of cases of AIDS registered in the prisons increases exponentially while the Medical Service is permanently saturated.

## **Areas of Concern**

### ***Health matters***

#### *Lack of medical staff*

The total number of permanent qualified medical staff working in prisons is one doctor and nine nurses. There are 5 prisons in the country which do not have a Medical Service for lack of staff.

At Windhoek central prison there is a clinic with 36 beds, also containing a consultation room, a quarantine room for contagious diseases and a pharmacy. This

clinic serves the male prisoners. Women go to the clinic situated in their quarters which has a total of eight beds used mainly by pregnant and breast-feeding women.

The joint number of medical personnel working in these two medical units is three nurses and one doctor. The doctor who has the joint function of Chief Medical Officer of Prisons comes only twice a week for consultations. Nurses, who have consultations three days a week, see on average 100 patients per day each. The Prison Clinic has a lot of equipment at its disposal for medical investigations and care, which are not in use for lack of staff. The prison clinic has a well equipped dental surgery, but people with dental problems are taken in their dozens to the hospital where dentists have opted for the easy solution of treating these patients by systematically extracting any bad teeth.

At Walvis Bay prison the clinic has a capacity of 12 beds for observation, including two isolation cells. One nurse works there permanently with two assistants. They see on average 50 patients per day. A doctor comes twice a month to the central hospital for consultations.

At Oluno Rehabilitation Prison a nurse and her assistant work in the Prison Clinic which should normally employ three nurses and two assistants. They see on average 40 patients per day and the most serious cases are transferred to the hospital of Onandjokwe, situated 5 km away, or the Oshakati hospital located at a distance of 30 km. The hospital doctor was in the habit of coming once a week to the prison; he no longer comes for lack of staff in his own hospital.

At Grootfontein prison there is a small clinic with a single nurse. Serious cases are transferred to the hospital at a distance of around 1 km. Being the only staff, the nurse is permanently on call.

At the Elisabeth Nepemba Juvenile rehabilitation centre a new clinic is under construction. The Centre's nurse works temporarily in a room set up for this purpose. He sees on average 17 patients per day. The most serious cases are transferred to the central hospital at a distance of 16 km. The nurse has expressed his desire to have an assistant before the new clinic opens.

#### *Delay in transferring sick prisoners to hospitals and specialised centres*

One of the main complaints that the delegation of the Special Rapporteur heard from the prisoners regarding their health was the fact that the prison authorities do not intervene promptly to transfer sick people to hospital. This state of affairs, which was observed by the delegation during their visit, exists in both prisons which have a clinic and those which do not. Several reasons are given to justify this delay: lack of a vehicle for transport, insufficient staff, fear of prisoners' escaping, the prison authorities are not informed about how serious the state of health of prisoners.

At Windhoek central prison, the delay noted in transferring sick inmates to the central hospital is also due to the size of the prison population.

At Katatura police station, the inmates indicated that whenever they are ill, there is always the opportunity to see the doctor, even though the police authorities occasionally claim not having enough staff to comply with the doctors' recommendations to keep some sick inmates under observation in hospital. Foreign prisoners, on the other hand, have said they are not always allowed to see the doctor when they request it.

Nevertheless, the delegation confirmed that all seriously ill people they encountered in cells had been seen by the doctor.

At Walvis Bay prison, the logbook of complaints, which also is where sick people register their health problems, seems well maintained and up to date. Complaints

received regarding evacuation of prisoners to hospital concern above all cases of medical specialisations such as ophthalmology and psychiatry, which requires the transfer of sick prisoners to Windhoek.

At Omaruru prison, the majority of prisoners try to obtain a recommendation for a specific diet from the doctors by any means at their disposal, harming those who are really sick and need medical attention, care and a specific diet. In fact, in this prison in which there is no medical service facility, the prison management finds it very difficult to distinguish those who are really ill from those who are not as large numbers of inmates claim to be ill. Yet, the hospital continues putting pressure on the prison, telling them that they do not have enough staff and therefore only want to attend prisoners who are seriously ill. The number of consultations for prisoners has been reduced to two days per week. Some prisoners who have written appointments with the doctor are not able to obtain permission to return for their appointments because the system in prison functions on the basis that the prisoners see the doctor in a roster system.

At Omaruru police station, the authorities admitted to the delegation that three prisoners were in urgent need of being transferred to hospital, but that they did not have the means of transport to do so – the hospital is at a distance of 1,500 m. When the delegation's visit took place, at 2:25 pm on the same day, these sick people were still waiting. The police station however had three vehicles. According to the officer we met, one was broken down, one was being used on a field mission and the third was being used by the station commander.

At the Mariental police station, a nurse comes once a week to care for the sick. Those who need to go to hospital are not always taken there in time. On the day of the visit of the Special Rapporteur there were 2 sick inmates who should have attended hospital appointments 3 and 5 days earlier, respectively. However, neither had been given permission by the police to do so.

#### *Diet, health care, and status of morbidity and mortality*

At Windhoek central prison, the women complained that the medical staff did not take time to hear their complaints and examine them in a closed room where their private life and intimacy could be respected. Prisoners who are on a diet recommended by the doctor only follow the diet three days a week, and for reasons of security, no prisoner is allowed to receive food from outside. The prison itself does not have a dietician. Prisoners have reservations about the capacity of the prison to offer them an adequate diet. High blood pressure, respiratory diseases including tuberculosis and AIDS are the most frequent illnesses. There have been three deaths since the beginning of 2001.

At Walvis Bay prison, on the day the delegation was visiting, there were 38 prisoners who had tested positive for HIV, 38 who suffered from bronco-pulmonary diseases, of which 23 were tubercular, 3 suffering from mental illnesses and 3 from epilepsy. Around fifty prisoners were on a diet by recommendation of the doctor on the day of the visit. Nevertheless, it should be mentioned that a crisis of confidence is building up between certain of the prisoners' private doctors and the prison authorities regarding the diets recommended for the prisoners. The latter accuse the former of being too complacent in their recommendations. In any case, in view of the large number of prisoners who ask for a diet, the prison doctor has decided that from now on, apart from chronically ill patients, only those with food allergies should be considered for a diet. Three deaths were registered in the year 2000, two of which were AIDS related.

At the Walvis Bay police station, a nurse comes twice a week from the hospital to see the sick prisoners. The latter complain of only being given tranquillisers. This

information was confirmed when the delegation met some of the sick prisoners. One was going through an asthma crisis and had been seen that morning by the nurse, who had given him a simple painkiller for his treatment. The prisoners also pointed out to the delegation that those who suffer from tuberculosis are always in contact with the others, even during the first two weeks of treatment, the period during which the illness is potentially highly contagious.

At Omaruru prison, there were four sick people in bed, two with high blood pressure, one suffering from AIDS and one from epilepsy.

At the Oluno rehabilitation centre, AIDS and respiratory diseases including tuberculosis are the most frequent illnesses. In 2000 there were six prisoners with mental illness in the prison. Five of the 20 prisoners suffering from AIDS in 2000 were released for health reasons. There was one death in that group. On the day of the delegation's visit the 14 other HIV positive prisoners and four other who were diagnosed in 2001 were in hospital.

The transport of sick inmates to hospital is a problem given that the prison does not have an ambulance. The nurse is sometimes forced to use her private car for this purpose.

At Odangwa police station, the state of some inmates' health was highly critical as three weeks before the police authorities had stopped the transfer of sick prisoners to the hospital. The delegation was told this happened for lack of staff and of means of transport. Some inmates even pleaded in vain that they be given permission to go to the hospital at their own expense. According to the prisoners, the alleged lack of means of transport by the prison authorities is not true as very often the prisoners walked to the hospital (2,500 m). The police station had three deaths in 2000 and 3 in 2001.

The clinic in the Grootfontein prison sees on average 20 patients per day. At the time of the visit of the Special Rapporteur's delegation, seven inmates were in the "Observation Room for Sick People". Of these seven, only one was ill. It turns out that this observation room is not under the control of the nurse. The prison authorities decide who will be put in this room. At the time of the visit to the cells, at 12:00 that day, the delegation found four sick people who should be under observation for a few days at least in the clinic.

Two of these four patients who were suffering respectively from an attack of malaria and an infection of the respiratory system had appointments to see the nurse that day. However, the officer who collected complaints in the various cells that morning had omitted going into the room where these two patients were lying.

Of the ten prisoners who receive a special diet, seven have AIDS, two suffer from tuberculosis and one from diabetes.

Five deaths have been registered over the last 24 months among the prisoners. All of these deaths occurred in the central hospital where a special room has been prepared for the sick prisoners who need to be hospitalised.

At Grootfontein police station, prisoners are unanimous in saying that the prison authorities did not make any effort to help sick prisoners to be seen by a doctor as soon as possible. At the time of the visit of the Special Rapporteur's delegation to the cells, there were at least three sick inmates who urgently needed to be seen by a doctor. One of the three had a nosebleed since that morning. His bleeding had only slowed down through the intervention of a co-detainee who had inserted a bunched up piece of paper into the bleeding nostril. The prison authorities explained that this state of affairs was due to their vehicle having broken down over a week ago and also because their request to the hospital to send a nurse once a week to care for sick prisoners had so far remained unanswered. They added that they had

had many cases of prisoners escaping on their way to hospital in other circumstances, which led to the dismissal of some of their colleagues who were escorting the escapees.

At Rundu police station, during their visit to the cells, the Special Rapporteur's delegation met three sick persons who were in a very bad state, but who had not been taken to hospital, although it was only a short distance from there. One of them had a written appointment to return to the hospital five days earlier for his haemorrhoidal illness to be monitored. The prisoners expressed their concern that at meals they were forced to share a plate. They believe that they are at high risk of being contaminated from untreated sick fellow inmates.

At the Elisabeth Nepemba Juvenile Rehabilitation Centre, the most frequent illnesses are malaria, and diarrhoeic and pulmonary diseases. There was only one case of tuberculosis and one of AIDS under observation at the hospital. During the period of 2000–2001 there were two deaths in the centre.

At Hardap prison, a nurse and two assistants work in the prison clinic, seeing about 120 patients per day. The most frequent pathologies are high blood pressure and pulmonary diseases including tuberculosis and AIDS. At the time of the visit of the Special Rapporteur's delegation, there were 18 prisoners with AIDS and 12 suffering from tuberculosis. The most serious cases are transferred to the central hospital of Mariental, located 15 km from the prison. Since January this year, 25 prisoners have been hospitalised there. Prison overcrowding has repercussions for the prison clinic. Thirteen patients were under observation in an observation room with a capacity for seven beds. Furthermore, the prison's medical section does not have hot running water due to a breakdown in the system and the patients expressed a desire for it to be repaired. Four deaths have been registered since January 2000.

#### *HIV/AIDS*

According to a 1999 report of the UNDP office in Namibia, since 1998 Namibia has joined the group of countries considered as most affected by AIDS with at least 20% of the active population ill with the disease, leading to a general lowering of life expectancy from 58.8 years in 1995 to 55.8 years in 1998.

This high national prevalence of AIDS is obviously reflected in the prisons where the environment favours homosexual relations and other factors that promote the disease.

Prisoners take the AIDS test under different circumstances. The doctor may recommend the test at first for prisoners with various pathologies that seem banal, but who do not get better within the usual time frame. Also the prisoners sentenced to more than two years in prison are encouraged to be tested. The test is always preceded and followed for those who are HIV positive with counselling.

In some prisons there are educators to raise the prisoners' awareness about AIDS. They work in collaboration with the prison medical staff. In the other prisons, especially those that do not have a medical service, these educators come from outside. However, the delegation found that sessions to raise awareness about AIDS in those prisons were usually sporadic and were not always based on appropriate educational material. Posters about AIDS were not visible except near the clinics of these prisons.

In order to be released for reasons of bad health, prisoners with AIDS must be completely bedridden and their state of health certified by three different doctors other than the prison doctor, who is only responsible for recommending the patient to begin with.

At Oluno Rehabilitation Centre some prisoners volunteered to undergo an AIDS test but were refused the test by the prison medical service who argued that voluntary HIV testing is not part of the prison's aim to combat AIDS.

At Odangwa police station, prisoners brought to the attention of the Special Rapporteur's delegation one aspect of the behaviour of police staff which favours the transmission of the AIDS virus. In fact, the police officers in this station often use handcuffs on the prisoners, which are blood stained from the person who last used them. This happens because the handcuffs are closed very tight when the police think the prisoner might escape.

At Grootfontein prison no activity to raise awareness among inmates about AIDS has begun. However, the nurse told us that he had just finished a 6-weeks training course after which he should be capable of carrying out such an activity within the prison. He was only waiting to receive the necessary educational material.

At Hardap prison some inmates started drama groups to raise awareness about AIDS among their colleagues. Their action complements the awareness raising actions carried out by professional educators on AIDS. In spite of all these efforts, prisoners with AIDS continue to be put in solitary confinement in this prison, in violation of their right to non-discrimination due to their serologic status.

### *The mentally ill*

The medical management of mentally ill prisoners in prisons in the interior of the country leaves much to be desired. It appears that these patients, who have been seen by a psychiatrist in Windhoek only once or twice since their detention, which could sometimes be five years earlier, have no medical follow-up where they now are for lack of qualified medical staff (psychiatrists) in hospitals in the countryside. Worse still, the legal psychiatrist in Windhoek, who is overwhelmed with the excessive number of prisoners hospitalised in his clinic or needing his services at the police station, has no statistics on this group of sick people nor a programme of follow up and monitoring. He told the delegation that in the near future a course of initiation in medical care for psychiatric patients was going to be organised for some doctors who work in the countryside.

In all, the release of 25 prisoners with psychiatric problems for reasons of health has been recommended by the legal psychiatrist since January 2000. The 18 patients who are in the rehabilitation unit should all benefit from the doctor's recommendation to be sent back soon to their families for reintroduction into society.

According to the legal psychiatrist, the situation of overcrowding in his department and the long list of patients who wait in different prisons for their transfer to this department should improve if magistrates worked on reclassifying so-called "State President Decision Patients", so that petty offenders might be acquitted and followed up medically outside prison.

At Rundu police station, for instance, there were five mentally ill patients of whom two had fallen ill over the past six months. Neither of the two recently mentally ill patients have had a chance to be seen by the psychiatrist so far. Of the three others, there was a juvenile who was in prison for four years for having murdered his mother. His last visit to the psychiatrist was 16 months ago. He receives no treatment and the prison authorities still consider him to be a mentally ill patient awaiting transfer to the psychiatric clinic of Windhoek.

Another mentally ill patient in the group had involuntarily attracted the attention of the delegation by his cries and threats against the police officers. In fact, this detainee had not been isolated for lack of space and the police authorities were concerned that he would one day become aggressive.



### *Homosexual relations*

Homosexuality does not seem to be as widespread or receive the same favourable conditions for its existence in all the prisons. The causes that promote this phenomenon range from non fulfilment by the prison authorities of certain vital needs of the prisoners (food, toiletries, blankets...) to overcrowding, which is reaching alarming proportions in some prisons and other places of detention. The risk is specially high when adult prisoners are housed together with minors.

At Walvis Bay prison prisoners stated they were aware of the existence of homosexuality in the prison, but some of them are reluctant to receive any information or education on this matter. A prisoner who spent more than five months in prison went to the clinic for a consultation about a perianal gonorrhoeal abscess that could only have been caused by homosexual relations.

At Hardap prison, homosexual practices seem to be widespread. The prison authorities are aware of it and the prisoners accuse them of not going to the heart of the causes. Young and destitute prisoners agree to pair with adult prisoners in the secret hope that they will see their living conditions improve; other do so in the hope to get more food. All this goes on in view of the prison guards who regard it with indifference.

### *Behaviour of staff vis-à-vis the prisoners*

The delegation heard few allegations of physical ill treatment of prisoners by the prison staff in the **prisons** visited. However, In Oluno, Omaruru, Grootfontein and Walvis Bay some inmates complained of having been beaten by staff. Many allegations of abusive language used by the prison staff against detainees were noted including insults (Oluno prison, Walvis Bay prison) some with racist connotations (Walvis Bay and Hardap). Furthermore, women complained of having to suffer daily degrading body searches in Oluno prison. The female guards ask them to open their legs or crouch. Once they lodge a complaint this practice ceases for a few days but systematically recommences. Some inmates complained of discrimination and arbitrary practices. Some guards would refuse to speak in a language that the prisoners understood and would force them to speak in Oshiwambo. They would not listen to prisoners who could not or would not speak in that language (Oluno, Hardap).

The Special Rapporteur wishes to highlight the importance of adequate training in control techniques, physical control and body searches. If they had such skills the staff would know the most appropriate response when confronted with difficult situations, thereby significantly reducing the risk of lack of respect for the dignity of prisoners. This, in its turn, would mean fewer complaints about abuse on the part of inmates.

The delegation recommends the authorities, both at national and local level, to make it clearly understood to prison staff that all forms of ill treatment inflicted on inmates, including abusive language, are intolerable and will be severely punished. Prison personnel must also be aware that the recommendations made by their superiors with regard to the treatment of prisoners must be strictly adhered to.

To deprive a person of his or her liberty implies being responsible for detaining that person in conditions compatible with the inherent dignity of human beings. The findings during the visit indicate that this responsibility is not being fulfilled with regard to a number of people held in police custody or on remand in **police** stations. Current conditions are particularly damaging to those who appear before a magistrate after having spent a considerable amount of time – sometimes several weeks – in places of detention which do not conform to the standards required and

are often in extreme bad conditions of hygiene, not having been able either to sleep or eat properly, nor having had the possibility to wash or change their clothes.

The delegation heard a certain number of allegations of ill treatment of prisoners at the hands of the forces of the law and order. Most of these allegations were against the police. Furthermore, the delegation collected information from other sources regarding ill treatment inflicted by the police. The allegations heard referred mainly to the period of questioning and interrogation but also during detention. A number of the allegations made related to periods prior to the visit of the Special Rapporteur. However, the scars caused by the alleged forms of ill treatment had not disappeared in the meantime. The delegation, and specially the doctor which was part of it found that 15 prisoners in Grootfontein prison had scars on their backs, torsos, legs, hands and forearms that were compatible with their allegations of having been violently beaten up with truncheons, whipped while naked, and bound hand and foot by the special forces of the Katima police, not receiving any medical treatment afterwards. Added to this, they had been deprived of food and water for three days. It was after a visit of the International Committee of the Red Cross (ICRC) that they were taken to hospital, on the 18<sup>th</sup> of August 1999, or 16 days after their arrest. Furthermore, the prisoners on remand in Grootfontein informed the Special Rapporteur that three persons who had been arrested with them were missing. Their whereabouts is nor known either by the prisoners who made the allegation or by those who have gone missing. The Special Rapporteur has the names of these people.

Some prisoners of Windhoek central police station complained of having been chained to bars in the courtyard during 3 and 6 days respectively, and also in their cell.

An elderly detainee at Ondangwa police station is alleged to have been beaten up by the police and of having lost several teeth at the time.

Prisoners at Rundu police station complained of having been beaten and insulted, particularly during interrogation, and of being forced to sign confessions.

Prisoners at Mariental police station stated that certain staff members at the station agreed to provide services for them after 5:00 pm in return for money.

The information which the Special Rapporteur came across demonstrates that the Namibian authorities must pursue their efforts to combat ill treatment from members of the forces of order, particularly the police. The best possible guarantee against ill treatment is the unequivocal rejection of such procedures by members of the forces of order. This implies that strict selection criteria must be applied when recruiting personnel as well as appropriate professional training. Human rights principles must be integrated in practical professional training in the management of high-risk situations, such as questioning, interrogation and management of persons in detention and those with difficult behaviour. This approach would be more effective than giving separate courses on human rights. It should be noted that all the members of the forces of law and order – at all the levels of hierarchy – should receive continuous professional training.

The Special Rapporteur wishes to mention the initiative of W.D. Steenkamp, police commissioner at Mariental police station, which started when he took up his position, three months prior to the visit of the Rapporteur. This initiative is sufficiently unusual to be noted. Mr W.D. Steenkamp assembles his staff once a week to speak to them about the manner in which they should behave towards the prisoners. On the whole, this officer gave the Special Rapporteur a good impression, as he appears to be trying to reform practices at the police station with regard to the treatment of prisoners on remand and convicted prisoners. There is however still a lot to be done.

The Special Rapporteur recommends that the upper hierarchy of the police force should make it clear to subordinates and remind them firmly, in an appropriate manner and at regular intervals, that to inflict ill treatment on prisoners is unacceptable, that disrespectful, aggressive, insulting or degrading behaviour will not be tolerated and that any such occurrences will be severely punished.

The Special Rapporteur recommends that steps be taken to ensure that members of the police's Special Forces do not make use of such practices.

One of the most effective means of preventing ill treatment inflicted by the forces of order is for the competent authorities to diligently verify all complaints concerning such treatment which may come to their knowledge and, if these complaints are justified, to impose appropriate disciplinary and or penal punishment.

The inspection of the police forces' places of detention, made by an independent organisation would greatly contribute to the prevention of ill treatment of prisoners and, more generally, to creating satisfactory conditions of detention. To be fully effective, the visits of such organisation should be both periodical and unexpected, and the organisation in question should be able to talk to prisoners without the presence of a witness.

#### ***Problems of access to legal assistance***

Prisoners may request assistance from the State or from an NGO when they do not possess the means to pay a lawyer's fees for their defence. According to the Ministry of Justice, 40% of prisoners receive legal aid, 20% have their own lawyer and the others defend themselves without legal counsel. Some NGOs have set up legal assistance mechanisms to help prisoners who need it.

Many prisoners complained about not having enough legal aid and of not knowing the procedures and their rights, particularly regarding parole, remission, legal aid, etc. Both in prisons and in police stations, prisoners awaiting trial or having appealed against their conviction complained that they did not have sufficient information about the status of their cases.

There are many cases where people have requested legal aid, have paid the required NAD 150, but have never seen a lawyer and have been tried without legal assistance (notably one case in Walvis Bay).

The Special Rapporteur would like to draw the authorities' attention to the case of 125 detainees in Grootfontein prison (detainees from the Caprivi region) who were awaiting their trial and did not have a lawyer, having to respond to 275 charges and appear before the High Court. The lawyers who had initially agreed to defend them ended up retracting, as they were not given access to the case files. Some of the detainees requested legal aid but it was refused. These prisoners complained that judicial guarantees are not respected, that their trial will not be fair as they are not being allowed to prepare their defence (no information, they do not know what evidence there is or the names of the witnesses, etc.). They appeared before a judge for the first time on the 23<sup>rd</sup> of August 1999 from 5:00 to 11:00 pm, i.e., 21 days after their arrest. Their case was adjourned nine times before being transferred to the High Court. All requests for conditional release were refused.

#### ***Boards for release, reduction of sentences and parole***

The prison law of 1998 determines that national and zonal release boards should be set up. The mission of the national release board is to recommend to the Ministry of Prisons which prisoners serving sentences of more than three years, including recidivists, could be given parole or a reduction of their sentence, and the conditions for the execution of such measures.

The zonal release boards act in one or more zones. At the request of the head of a prison, they are entrusted with examining and granting parole or a reduction of sentence to a detainee serving a sentence of less than six months. Zonal commissions also have the task of recommending to the Commissioner of Prisons which prisoners serving sentences of between six months and three years could benefit from a reduction in their sentence or parole, as well as the conditions for executing such a measure.

At the level of each prison, a board (called Institutional Boards in maximum security prisons and Management Commissions in other prisons) is responsible for recommending the prisoners to the release commission.

In practice, the zonal boards do not work and have not even been set up. This means that the prisoners serving sentences of less than three years cannot benefit from parole even though they may be eligible to do so. As 81.4% of the prison population was sentenced to less than two years of imprisonment in the year 2000, this malfunction of the release boards is certainly one of the major sources of prison overcrowding.

Sentence reductions are partially applied (up to one third of the sentence). It should be noted that the prison law excludes reductions of sentences in a large number of cases. Thus, recidivists, those sentenced to life in prison, criminals who have committed or tried to commit an act of violence against women or children, treason, murder, rape, theft, cattle rustling, escape, breaches of the drug laws, car theft, burglary with criminal intent, breaches of the law on the conservation of nature or on protected wildlife, are in principle not eligible for reductions in their sentences.

Added to this, there are the extremely severe conditions imposed on the granting of parole, which are so demanding that hardly any prisoner can fulfil them. According to the Ombudsman's office, these conditions render parole impossible. This situation is under study by the authorities.

The Special Rapporteur wishes to remind the authorities that parole is an essential measure. It constitutes a good means of favouring the reintroduction of convicts into society and prevents recidivism. In fact, apart from a very small number who have been sentenced to life in prison, most prisoners eventually leave prison. Parole is an individualised way of releasing prisoners under the best possible conditions, both for themselves and for the safety of society, as prisoners who benefit from parole are not released unconditionally. It is not a pure and simple release, without any control, as is the case with a presidential pardon.

The Special Rapporteur would like to encourage the authorities to do their utmost to relax the conditions for granting parole and start the zonal release boards functioning effectively and without delay. This would considerably help to alleviate the problem of overcrowding and would also improve the chances of rehabilitation for the prisoners.

## **Good Practices**

The Special Rapporteur would like to make reference to some interesting experiences and practices that could be generalised throughout the rest of the country and could serve as an example to other African institutions and countries.

### ***The Ombudsman's office***

The Special Rapporteur would like to mention the efforts made to improve this vital mechanism for the respect of citizens' rights. In spite of the difficulties encountered by the Ombudsman's employees in the exercise of their functions, important efforts are being made to restructure the activities of the Ombudsman's office in order to reinforce the effectiveness of the protection of fundamental public freedoms in Namibia. The increased number of staff, the reforms undertaken and the choice of a global treatment for basic solutions to the problems brought to the attention of the Ombudsman's office are initiatives that the Special Rapporteur wishes to encourage. The Special Rapporteur also wishes to recommend that the Ombudsman's team is increased, particularly as regards as to more lawyers and highly qualified personnel.

The Special Rapporteur also recommends that all the ministries fully cooperate with the Ombudsman's office in the interests of safeguarding fundamental liberties.

### ***Management and administration of prisons, prison farms, prison buildings***

The Special Rapporteur noted that the Ministry of Prisons and the Prison Administration committed themselves to carry out constructive reforms relating to the treatment of prisoners, rehabilitation and management of prisons. Rehabilitation and reintroduction into society as a means of combating recidivism and criminality are priorities of the Government and the Special Rapporteur encourages the country's authorities to take this constructive and sensible path.

The Special Rapporteur would also like to underline some of the good practices observed in the prisons visited:

A prison identity card is given to each prisoner on arrival, as well as a health booklet. The logbooks (particularly in Oluno) are usually well maintained, statistics are prepared making it much easier to understand the situation and the management of the prison. The Special Rapporteur also noted that the prisons were often quite well equipped, especially with regards to information technology, and that in general staff were well treated.

The Special Rapporteur found that important efforts are under way to improve the prisons' self-sufficiency in food supplies.

The Special Rapporteur would like to mention in particular the development of prison farms; staff training and the construction of a new training school which may in time have a sub-regional scope (Omaruru); the relocation of juvenile delinquents through the construction of a specialised centre for minors in Rundu. The Special Rapporteur commends these efforts by the Government of Namibia.

### ***NGOs' actions***

The Special Rapporteur would like to mention the programmes and activities undertaken by BRIDGE and the Legal Assistance Centre, and recommend to the country's authorities that they strengthen their collaboration with the structures created by civil society

The aim of the Legal Assistance Centre is to improve access to the law, particularly for persons already in the justice system and minors, to strengthen the mechanisms for conflict resolution, to participate in civic education and raise the awareness of the public on important society issues, particularly when human dignity and rights are

under threat, and more generally to contribute towards actions that favour the promotion and respect of human rights in Namibia.

BRIDGE's aims are to contribute towards setting up a complete and innovative justice system for minors in the Hardap region, to train and raise the awareness of the community and of juveniles in prisons and other centres of detention on social and legal issues which can affect them, to contribute towards national efforts to combat juvenile criminality, to defend the interests of minors in conflict with the law, and to follow up and help juveniles in difficulty or already in conflict with the law.

The projects and skills that these organisations have developed or wish to develop in partnership with the authorities are part of the innovative and constructive spirit that the country's authorities would like to encourage in the fight against criminality, with effective rehabilitation of offenders and respect for human rights.

## **Recommendations**

### ***Complementary information required from the Government of Namibia***

The Special Rapporteur wishes to obtain:

- information about the status of implementation of the projects to develop training programmes for members of the forces of order (prison and police)
- information about possible external control mechanisms to monitor cells in police stations
- additional information on current and planned mechanisms to enable the verification of complaints about ill treatment at the hands of prison staff and police
- the most precise indication possible about the number of people detained by police (annual population and average population on a given day)
- the conclusions of the enquiry concerning the above mentioned death that took place in Walvis Bay prison and the threats against a prisoner who allegedly was a witness to scenes of violence preceding the death of this prisoner
- the fate of three missing persons arrested during the events that took place in the province of Caprivi in August 1999: Oliver Nbulunga (40 years), Michael Nuwe (40 years), Charles Mukena (26 years). The Special Rapporteur would like to have precise information regarding what happened to these men since their arrest on the 2<sup>nd</sup> of August 1999.
- the conclusions of the autopsy report concerning the demise of Fanuel Heibeb, who died at Hardap Prison in the week preceding the visit of the Special Rapporteur.

### ***Measures recommended by the Special Rapporteur***

Apart from the measures already suggested in the body of the report, the Special Rapporteur would like to add or insist on a certain number of recommendations:

#### *General Recommendations*

- Access to legal aid should be improved, particularly by reinforcing jurisdictional assistance and by developing mechanisms of para-legal aid with the help of the competent NGOs according to the model of what is being done in Malawi.

- External controls of detention in prisons and police stations should be strengthened. Visiting justices should use to the full the powers conferred on them by the prison law to contribute towards the improvement of conditions of prisons and police stations.
- External controls should be increased and the parliamentary committee on safety should visit prisons and police stations regularly. The Ministries of Home Affairs, of Prisons and of Justice should try to collaborate more effectively with the Ombudsman's office.
- Rules and practices should be harmonised so that all prisoners have the same rights and duties in respect of visits, exercise and permission to go out, etc.
- NGOs should play a more important role in setting up training programmes, preparing prisoners for release, etc.
- Release boards should be made operational without delay.
- Protection of minors should be strengthened both within prisons and in police stations.
- Measures such as parole, judicial control, reductions of sentences, community service, diversion, mediation and permission to go out should all be developed.
- Magistrates should be made aware of non-custodial measures and trained, and their number should be increased, as well as that of lawyers, in order to combat prison overcrowding.
- Communications between personnel and prisoners should be improved to encourage the development of trust, which is necessary for mutual respect to exist.
- Communication between the police, prisons and immigration services should be reinforced in order to allow foreigners awaiting transfer to a refugee camp or deportation to be dealt with without excessive delay.
- The quality and quantity of food should be improved both in prisons and police stations.
- Programmes for the occupation and rehabilitation of prisoners should be strengthened, particularly for juveniles and prisoners serving long term sentences.

#### *Health Recommendations*

- The deficit of medical and paramedical personnel should be set right without delay. Large prisons such as those with high security, with a prison population of around 1,000 prisoners, should all have a qualified doctor as the head of the medical service. The Prison Health Board should also have more staff, notably by recruiting a doctor with epidemiological specialisation and a psychiatrist. It is essential that the Ministry in charge of prisons recruits its own psychiatrist who should be directly responsible for the care of mentally ill prisoners. This would only facilitate the work of the Legal Psychiatrist.
- Ministerial departments and institutions involved in the management of the mentally ill in conflict with the law (Ministry in charge of Prisons, Health, Police, Justice, the Supreme Court and the Ombudsman's Office) should sit down together to discuss and harmonise their views on the management of this category of prisoners. They should agree on the interpretation of legal texts, in

this case the law for the mentally ill of 1993, and set up a mechanism of effective coordination for their actions and interventions.

- A reference hospital should be created for Windhoek prison. This hospital, which would initially use the significant amount of medical equipment already available, would make it possible to limit the number of cases of prisoners taken to a civilian hospital, which themselves suffer from a shortage of staff.
- Certain clinics in large prisons should be renovated/extended and contain observation rooms and rooms for isolation of contagious diseases which would be adequate and in accordance with the needs of the prison. Medical Units (clinics) should be opened in those prisons which do not already possess them.
- Information and awareness raising sessions about AIDS for prisoners should be intensified and voluntary testing for HIV should be encouraged. Structures for psychological care and counselling, particularly before and after testing for those who are found to be HIV positive, should be strengthened.
- People detained in police stations should have access to medical care and police stations should have a nurse officer capable of making a basic diagnosis and of directing the sick person to a health care centre if necessary.

#### *Specific Recommendations to the Prison Administration*

- The Prison Administration should have a lawyer or qualified jurist in permanent employment.
- All the necessary work for the maintenance and repair of facilities, particularly the sanitary installations, should be carried out as quickly as possible to avoid the irreversible deterioration of these very costly facilities.
- To combat ill treatment of all kinds inflicted on prisoners, but also to improve the quality of relations between prisoners and staff, training of prison personnel should be considerably strengthened and a study should be undertaken in advance to identify the exact needs and priorities for training.
- Minors should be kept strictly separated from adults.

#### *Important Recommendations to the Police*

- Conditions of detention in police stations should be improved without delay.
- All persons detained by the police should be allowed to receive visits from their families and friends as well as food from outside.
- Staff should receive extra training and clear instructions so that they understand that ill treatment will under no circumstances be accepted as a means of controlling prisoners, and that according to the law they will be punished if they resort to such treatment.
- A general re-examination of the conditions of detention in the national police establishments should be made with the objective of establishing detailed and up-to-date standards for these places of detention.



*Recommendation to the Ombudsman*

- The Ombudsman should ensure that prisoners in police stations are regularly visited by his team.

**4. Government Comments****Annexes****Food rations**

Sunday			Children	
Item	Men	Women	6 months – 1 year	1 – 3 years
Maize meal	200g	130g	050g	120g
Bread Brown	210g	180g	-	005g
Soup powder	040g	040g	-	60g
Meat chicken 18%bone allowed	150g	150g	060g	060g
Tea	004g	004g	004g	004g
Milk powder	025g	025g	050g	020g
Margarine	040g	040g	010g	010g
Salt	015g	015g	001g	001g
Sugar	050g	050g	010g	010g
Fresh fruit	-	-	075g	075g
Fresh vegetables	250g	250g	360g	200g

Monday			Children	
Item	Men	Women	6 months – 1 year	1 – 3 years
Maize meal	200g	130g	040g	060g
Bread Brown	210g	180g	030g	075g
Soup powder	040g	040g	-	005g
Fish	150g	150g	060g	080g
Tea	004g	004g	004g	004g
Milk powder	025g	025g	050g	020g
Margarine	040g	040g	010g	010g
Salt	015g	015g	003g	003g
Sugar	050g	050g	020g	020g
Fresh fruit	-	-	075g	070g
Fresh vegetables	250g	250g	-	200g
Cooking Oil	050ml	050ml	-	-

Tuesday			Children	
Item	Men	Women	6 months – 1 year	1 – 3 years
Maize meal	200g	130g	040g	060g
Bread Brown	210g	180g	030g	075g
Soup powder	040g	040g	-	005g
Breakfast stew	050g	050g	020g	025g
Tea	004g	004g	004g	004g
Milk powder	025g	025g	050g	020g
Margarine	040g	040g	010g	010g
Salt	015g	015g	003g	003g
Sugar	050g	050g	010g	010g
Fresh fruit	-	-	075g	070g
Fresh vegetables	250g	250g	360g	200g

Wednesday			Children	
Item	Men	Women	6 months – 1 year	1 – 3 years
Maize meal	200g	130g	040g	060g
Bread Brown	210g	180g	030g	075g
Soup powder	040g	040g	-	-
Beef Hinds 18% bone allowed	150g	150g	060g	080g
Tea	004g	004g	004g	004g
Milk powder	025g	025g	050g	020g
Margarine	040g	040g	010g	010g
Salt	015g	015g	003g	003g
Sugar	050g	050g	010g	010g
Fresh fruit	-	-	075g	070g
Fresh vegetables	250g	250g	360g	200g

Thursday			Children	
Item	Men	Women	6 months – 1 year	1 – 3 years
Maize meal	200g	130g	040g	060g
Bread Brown	210g	180g	030g	075g
Soup powder	040g	040g	-	005g
Fish	150g	150g	060g	080g
Tea	004g	004g	004g	004g
Milk powder	025g	025g	050g	020g
Margarine	040g	040g	010g	010g
Salt	015g	015g	003g	003g
Sugar	050g	050g	010g	010g
Fresh fruit	-	-	075g	070g
Fresh vegetables	250g	250g	360g	200g

Friday			Children	
Item	Men	Women	6 months – 1 year	1 – 3 years
Maize meal	200g	130g	040g	060g
Bread Brown	210g	180g	030g	075g
Soup powder	040g	040g	-	005g
Fish	150g	150g	-	-
Tea	004g	004g	004g	004g
Milk powder	025g	025g	050g	020g
Margarine	040g	040g	010g	010g
Salt	015g	015g	003g	003g
Sugar	050g	050g	010g	010g
Fresh fruit	-	-	075g	075g
Fresh vegetables	250g	250g	360g	200g
Jam	050g	050g	003g	003g

Saturday			Children	
Item	Men	Women	6 months – 1 year	1 – 3 years
Maize meal	200g	130g	040g	060g
Bread Brown	210g	180g	030g	075g
Soup powder	040g	040g	-	005g
Fish	150g	150g	060g	030g
Tea	004g	004g	004g	004g
Milk powder	025g	025g	050g	020g
Margarine	040g	040g	010g	010g
Salt	015g	015g	003g	003g
Sugar	050g	050g	010g	010g
Fresh fruit	-	-	075g	070g
Fresh vegetables	250g	250g	-	200g
Curry	005g	005g	-	-
Pepper	002g	002g	-	-
Vinegar	020ml	020ml	-	-
Cooking Oil	050ml	050ml	-	-

### **The Mechanism of the Special Rapporteur**

The African Commission on Human and Peoples' Rights (ACHPR, hereafter the Commission) is an organ of the African Union (AU). The Commission's function is to monitor the implementation and respect of the African Charter on Human and Peoples' Rights. The Commission convenes twice a year for sessions during which the main points of its mandate and progress made by member States for a better implementation of the Rights protected by the Charter are discussed.

In accordance with its mandate under Article 45 of the African Charter on Human and Peoples' Rights, the Commission established during its 20th session in Mauritius, in October 1996, the position of Special Rapporteur on Prisons and Conditions of Detention in Africa. Commissioner Prof. E.V.O. Dankwa (Ghana), was appointed as the first Special Rapporteur. His mandate was renewed in 1998 and in 1999, he was elected Chairperson of the ACHPR. During its 28th ordinary session in Benin, in October 2000, the Commission nominated Commissioner Dr. Vera M. Chirwa, at the post of Special Rapporteur on Prisons and Conditions of Detention in Africa.

The terms of reference for the work of the Special Rapporteur have been set by the Commission as follows:

#### *Methods of work*

The Special Rapporteur shall:

- o examine the state of prisons and conditions of detention in Africa and make recommendations with a view to improving them;

- advocate adherence to the Charter and international human rights norms and standards concerning the rights of persons deprived of their liberty and the conditions in which they are held, examine the relevant national law and regulations in the respective States Parties as well as their implementation and make appropriate recommendations on their conformity with the Charter and with the Charter and with international law and standards;
- make recommendations to the Commission as regards communications submitted to it, by individuals who have been deprived of their liberty, by their families or representatives, by NGOs or other persons or institutions;
- propose appropriate urgent action.

The Special Rapporteur shall conduct studies into conditions or situations contributing to human rights violations of persons deprived of their liberty and recommend preventive measures. The Special Rapporteur shall co-ordinate activities with other relevant Special Rapporteurs and Working Groups of the African Commission and United Nations.

The Special Rapporteur shall submit an annual report to the Commission. The report shall be published and widely disseminated in accordance with the relevant provisions of the Charter.

#### *Means of implementing the mandate*

The Special Rapporteur shall seek and receive information from States Parties to the Charter, individuals, national and international organisations and institutions as well as other relevant bodies on cases or situations which fall within the scope of the mandate described above.

In order to discharge his/her mandate effectively the Special Rapporteur should be given all the necessary assistance and co-operation to carry out on-site visits and receive information from individuals who have been deprived of their liberty, their families or representatives, from governmental or non-governmental organisations and individuals.

The Special Rapporteur shall seek co-operation with States Parties and assurance from the latter that persons, organisations or institutions rendering or providing information to the Special Rapporteur shall not be prejudiced thereby.

Every effort will be made to place at the disposal of the Special Rapporteur resources to carry out his/her mandate.

#### *Visits*

The Special Rapporteur pays visits to various countries in order to obtain on the field first hand information. He/she meets with the authorities of the country, Heads of the Prisons Services, human rights non-governmental organisations, and representatives of the civil society. He/she visits prisons, police and gendarmerie cells, or any other place where people are imprisoned or jailed. During these visits, the Special Rapporteur requests access to all units in the prisons: punishment cells, women or juveniles' units, sick-bays, etc. He has confidential interviews with prisoners and discussions with prison staff and officials.

#### *Visit Reports*

Before leaving the country, the Special Rapporteur has further interviews with the authorities and the Head of the Prisons Service to share and discuss his

observations. He/she makes a number of on the spot recommendations on most crying problems. The Special Rapporteur then writes his report of visit and submits it to the government of the visited country who is invited to make comments or observations, and describe the measures taken since the visit of the Special Rapporteur. The SR's observations and the comments by the government are then published in three of the four working languages of the AU, i.e. English, French and Portuguese. Some reports are also published in Arabic. When the comments by the government are not received within a reasonable period of time, the report might be published without them.

### **Countries visited by the Special Rapporteur**

**Zimbabwe:** February-March 97. Report available in French, English and Portuguese.

**Mali:** August 97. Report available in French, English and Portuguese.

**Mozambique:** December 97. Report available in French, English and Portuguese.

**Madagascar:** February 98. Report not yet published.

**Mali 2:** December 98. Report available in French, English, Arabic and Portuguese.

**The Gambia:** June 99. Report available in French, English, Portuguese and Arabic.

**Benin:** August 99. Report available in French, English, and Portuguese.

**Central African Republic:** June 00. Report available in French, English, and Portuguese.

**Mozambique 2:** April 2001. Report available in French, English, Portuguese and Arabic.

**Malawi:** June 2001.

**Namibia:** September 2001.

**Uganda:** March 2002