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Summary record of the 4081st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 6 March 2024, at 3 p.m.

Chair: Ms. Abdo Rocholl

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Third periodic report of Namibia

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Third periodic report of Namibia (CCPR/C/NAM/3; CCPR/C/NAM/Q/3; CCPR/C/NAM/RQ/3)

1. *At the invitation of the Chair, the delegation of Namibia joined the meeting.*
2. **A representative of Namibia**, introducing his country's third periodic report (CCPR/C/NAM/3), said that the report had been drafted with input from both government agencies and civil society organizations. Namibia was a constitutional democracy. Its national human rights institution, the Office of the Ombudsman, had a broad mandate that included holding the Government accountable for human rights violations and protecting the environment. The Office operated independently and was subject only to the Constitution and the law. The Ombudsman bill, which would be put before the Parliament in 2024, would make the Office a separate agency and provide it with its own accounting officer to administer its budget.
3. To increase accountability and transparency in the public procurement process, the Government had established an Anti-Corruption Commission and enacted the Public Procurement Act (No. 15 of 2015). Public officials and bidders whose conduct was found to be corrupt or fraudulent could be prosecuted. The Government was also implementing a National Anti-Corruption Strategy and Action Plan that integrated the country's development plans. The Ministry of Finance and Public Enterprises had allocated funds for the implementation of the Witness Protection Act (No. 11 of 2017), and the Minister of Justice had begun appointing staff to the Witness Protection Unit created under the Act. Steps to operationalize the Whistleblower Protection Act (No. 10 of 2017) were under discussion.
4. The country's continued participation in review mechanisms of the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime and the Eastern and Southern Africa Anti-Money Laundering Group had led to the amendment of its laws and the development of new ones. Following a recent review by the Financial Action Task Force, the Government had renewed its commitment to strengthening its anti-money-laundering mechanisms.
5. Article 23 of the Constitution explicitly prohibited racial discrimination and apartheid. The Ombudsman had spearheaded the development of a bill to combat discrimination, discriminatory harassment and hate speech. Laws were in place to combat discrimination against women and to regulate customary marriage, inheritance and land ownership, and traditional authorities ensured that widows inherited their deceased husbands' land. The Government had developed the National Plan of Action on Gender-based Violence 2019–2023 to address the root causes of gender-based violence and provide for a well-coordinated response; it had also established special courts for gender-based violence offences and a school programme on the prevention of gender-based violence. The Ministry of Gender Equality, Poverty Eradication and Social Welfare continued to conduct campaigns to raise religious leaders' awareness of positive gender roles and eliminate harmful cultural practices.
6. Article 6 of the Constitution excluded death as a sentence available to courts, and section 49 of the Criminal Procedure Act regulated the use of force. The Government recognized several reported cases where members of the Namibian police and defence forces had been accused of using excessive force against civilians, and it had been ordered to pay damages to complainants and their families in civil matters brought as a result of allegations of assault or use of excessive force by law enforcement officers.
7. Article 11 of the Constitution prohibited arbitrary arrest or detention and required arrested persons to be brought before a court within 48 hours, and article 12 set out fair trial guarantees. The Criminal Procedure Act allowed all detained persons to apply for bail and to appeal against bail decisions to a superior court.
8. Article 21 of the Constitution guaranteed freedom of speech and expression, including freedom of the press and the media and freedom to assemble peacefully. Journalists in

Namibia were self-regulating and operated under a code of ethics for Namibian media. Reports regarding the conduct of journalists could be submitted to the Media Ombudsman, who was responsible for hearing and deciding on complaints against the media and journalists. Namibia had decided to amend its law on public gatherings, and a bill on public gatherings and demonstrations would be put before the Parliament in 2024.

9. Article 15 of the Constitution and the Child Care and Protection Act of 2015 formed the basic legal framework for the protection of children. The Government had developed and implemented a national plan of action to address violence against children. Multisectoral consultations were being held on the child justice bill concerning the coordination and institutional requirements for its implementation.

10. Namibia was one of the few countries in the world with a constitutional provision on the duty to preserve the natural environment and maintain natural ecosystems for the benefit of present and future generations. Namibia recognized the impact of development projects on the environment and had laws and policies in place to ensure that development was sustainable and that full consideration was given to the rights of affected communities. All oil and gas exploration projects were required to meet standards and requirements that sought to minimize their impact on the environment and on communities. All affected persons, including those in marginalized communities, were consulted at various stages before the project in question commenced.

11. As a country where the majority of Indigenous people had historically been deprived of their land by force, Namibia had taken steps to redress the injustices of the past and the resulting inequality in land ownership, including by holding national conferences on land reform and implementing a national resettlement programme. The Government remained committed to protecting and promoting human rights in the country.

12. **Mr. Yigezu** said that, in the light of reports that the budget of the Office of the Ombudsman continued to be controlled by the Ministry of Justice and that the Office could not recruit its own staff, he would appreciate further information on the specific steps that the State party planned to take to provide the Office with appropriate resources and ensure that it could manage its budget and staff independently. Further details on the content of the Ombudsman bill and the timeline for its adoption would also be welcome. Lastly, he wished to know how the State party ensured that public officials cooperated with the Office.

13. The Committee had received reports that senior officials of publicly owned enterprises continued to engage in corrupt practices, particularly with respect to public procurement, and concerns had been raised regarding the inconsistent enforcement of the country's anti-corruption laws and the difficulties in obtaining Government-held information for use as evidence. It would be helpful to know what steps the State party took to ensure that anti-corruption measures were effectively enforced, to promote transparency and accountability and to make information on corruption accessible to the public. He would also be grateful for an update on the so-called "Fishrot" corruption scandal and on the expected start date of the trial of those alleged to be involved.

14. He would like to know when the State party planned to fully implement the Whistleblower Protection Act and the Witness Protection Act. Regarding the former, the Committee was troubled by reports indicating that the penalties in place for false reporting were more severe than those for retaliation against whistle-blowers. In the light of those concerns, it would be useful to know whether the State party intended to amend the Act to provide greater protection from retaliation.

15. The Committee would appreciate confirmation as to whether the State party intended to put in place new policies, laws or guidelines for law enforcement officers to provide clearer criteria on the use of force that were consistent with article 6 of the Covenant and other international standards. He would also be interested to know whether the State party would consider amending its existing legislation on the use of force, including section 49 of the Criminal Procedure Act, to bring it into line with international standards. The delegation was also requested to comment on the high number of complaints received by the Office of the Ombudsman in recent years concerning police brutality and excessive use of force. The Committee would welcome further information on the cases filed, investigations undertaken, sanctions handed down to perpetrators and compensation provided to victims and their

families. It would also like to know what measures would be taken to ensure accountability for excessive use of force, such as strengthening oversight mechanisms and ensuring transparency.

16. **Ms. Kpatcha Tchamdja** said that she wished to know what steps had been taken to shed light on alleged acts of enforced disappearance that had taken place during the struggle for independence and the secession attempt in the former Caprivi region and, where appropriate, to return remains to the victims' families. It would be helpful to know whether all victims of human rights violations committed during the secession attempt, including the families of disappeared persons, had received adequate reparations. She would also welcome further information on the torture and enforced disappearance of members of the South West Africa People's Organization (SWAPO) during the struggle for independence. She wished to know whether the State party intended to acknowledge and apologize for those serious human rights violations and whether the Government considered it necessary to form an independent commission to establish the facts and make recommendations on ensuring restorative justice for the victims. The delegation was also requested to explain how the Government's decision to grant amnesty to perpetrators of serious human rights violations was compatible with the provisions of the Covenant.

17. In the light of the case of ReconAfrica, which had reportedly commenced oil and gas prospecting activities in the north-east of the country without a permit, the Committee would welcome further information on the measures that had been or would be taken to protect the health and livelihoods of local communities from the adverse environmental impact of mining and development projects, in particular the scrupulous enforcement of the legal and regulatory framework. She would be particularly interested to hear about any measures specifically intended to protect vulnerable groups, such as Indigenous communities.

18. **Mr. Soh** said that he would like to know whether the plans to increase child disability grants under the recently adopted National Social Protection Policy had been implemented and whether any other specific measures had been taken to address the discrimination faced by persons with disabilities. It would also be interesting to hear what progress the State party had made in its efforts to address discrimination against persons with albinism, including the development of a national action plan.

19. In the light of reports that members of the San community were being denied treatment and facing abuse at health-care facilities, the Committee would welcome further information on measures to combat the discrimination preventing Indigenous persons from accessing health care and participating in social, economic and political activities. He also wished to know what steps were being taken to address both the lack of health-care facilities in areas where Indigenous communities lived and the shortage of health-care personnel able to speak Indigenous languages. More generally, it would be useful to know why progress on the bill to combat discrimination, discriminatory harassment and hate speech had been delayed and what time frame had been set for its adoption.

20. While the Committee welcomed the May 2023 Supreme Court ruling that same-sex marriages contracted abroad must be recognized by the State, it would like to receive further information on the measures taken to protect lesbian, gay, bisexual, transgender and intersex persons from de jure and de facto discrimination and to address incidents of harassment and violence against them. The delegation was also requested to explain why the protection offered under the Combating of Domestic Violence Act and the Combating of Rape Act did not cover persons in same-sex relationships and how such limitations were compatible with the Covenant. Furthermore, he wished to know whether any training and education programmes had been put in place for law enforcement officers, members of the judiciary and health-care personnel to ensure that lesbian, gay, bisexual, transgender and intersex persons received adequate protection and had access to services. He failed to see how not recognizing sexual orientation and gender identity as prohibited grounds of discrimination under laws such as the Labour Act, and the State party's reluctance to repeal the common law offence of sodomy, were compatible with its obligations under the Covenant. He would welcome any explanations that the delegation might be able to offer in that regard.

21. **Ms. Donders** said that the Committee would welcome updated information on the status of all pending legislation promoting gender equality, including the bill on the

recognition of customary marriage, the divorce bill and the uniform matrimonial property bill. Information on how those bills would address discrimination faced by women would also be useful. She would appreciate further details on the workshops held to raise awareness among traditional leaders on discrimination against women in the context of customary marriage, inheritance and land ownership, including how often such workshops were held, where they took place and what their impact had been. She would like to know what measures were taken to ensure that women were not forced into polygamous marriages, either directly or as a result of root causes such as poverty and inequality. She also wondered whether women in polygamous marriages registered under customary law were protected under national legislation and whether education and awareness-raising programmes had been put in place to inform women about equal rights.

22. She wished to know whether the statistics provided by the State party on gender-based violence included cases of domestic violence. It would be helpful to know the main reasons for the fall in gender-based violence in 2023. She would also like to know whether the State party had evaluated the results achieved and challenges encountered in the implementation of the National Plan of Action on Gender-based Violence for the period 2019–2023. It would be interesting to know whether the State party intended to put a new plan in place and, if so, whether it would address concerns that had been raised about the insufficient allocation of resources and the exclusion of sex workers and lesbian, bisexual and queer women.

23. She would like to know what measures the State party took to combat new and intersectional forms of gender-based violence, including violence against women with disabilities, violence against Indigenous women, emotional violence and online violence. Was online gender-based violence specifically criminalized under cybercrime legislation? She also wished to know what measures were being taken to address the root causes of gender-based violence, such as inequality, poverty, social exclusion and alcohol and drug abuse. She wondered whether male engagement programmes and training had been developed and, if so, whether participation was compulsory and whether such activities had been held all over the country, including in rural areas.

24. The Committee would welcome further information on the measures taken to ensure that the Domestic Violence Court in Windhoek and other courts specializing in gender-based violence cases functioned effectively and had enough prosecutors and judges. She would like to hear more about how judges, police investigators and prosecutors were trained on gender-based violence and what measures had been taken to ensure that victims had effective access to those courts. It would also be interesting to hear what steps the State party was taking to address the backlog of unresolved cases of “passion killings” registered with the courts.

25. Given the relatively small number of gender-based violence victims who were accommodated in shelters, she wished to know how physically accessible such facilities were, whether they remained open after business hours and on weekends and what measures were taken to ensure that rural and Indigenous women had access to them. It would also be useful to know what steps were being taken to provide victims with psychosocial treatment and counselling, protection against stigmatization and reprisals and, where necessary, protection orders.

26. She would welcome information on the main outcome of the countrywide consultation on abortion and the Abortion and Sterilization Act and whether the State party intended to amend that legislation to fully decriminalize abortion or, at least, to expand the circumstances in which women could legally have an abortion. She wondered whether the State party would be willing to remove unwarranted administrative requirements from the Act. The delegation was requested to comment about ongoing concerns regarding sterilizations of persons with mental and other disabilities and HIV-positive women without their prior and informed consent.

27. It would be interesting to hear what measures the State party had taken to implement comprehensive sexuality education programmes in all schools and communities to enable young people to make informed decisions about their sexual and reproductive health. She also wished to know what specific action had been taken to improve access to sexual and reproductive health services, particularly for marginalized groups, including the removal of

language barriers. Lastly, in the light of reports that some health-care personnel thought that it was illegal to provide services to lesbian, gay, bisexual, transgender and intersex persons, she would like to know what steps the State party was taking to incorporate the concepts of sexual orientation and gender identity into overall national health programming and service delivery.

28. **Mr. Quezada Cabrera** said that the Committee would welcome disaggregated information on complaints of torture and ill-treatment filed against the Namibian Police Force, Namibian Defence Force and Namibian Correctional Service, including details of investigations undertaken, sanctions handed down and redress provided to victims. The data supplied by the State party referred only to the redress provided to victims of acts committed by the police, and were not disaggregated. He wished to know when the bill on preventing and combating torture would be resubmitted to Parliament and whether the definition of torture in the new text was consistent with the one set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee would also appreciate a more complete response to its request for details on any measures taken to ensure that sex workers could report crimes without the risk of prosecution for their occupation.

29. It would be helpful to know whether the State party had taken financial or other measures to ensure that the Office of the Ombudsman had sufficient resources to perform its role of monitoring detention conditions and to visit places of deprivation of liberty more frequently. He wondered what value the State party attached to the Office's reports on detention conditions and what action it took in response to the concerns raised therein.

30. He wished to know whether any special measures had been taken to prevent and combat child labour and sexual exploitation, including cases where the victims were Namibian children from vulnerable groups. It would be interesting to know whether labour inspectors were present and visible in rural and remote areas and able to carry out inspections of private farms. He would like to know how many victims had been identified during inspections and whether their cases had led to prosecutions and convictions under the Labour Act and the Child Care and Protection Act. The delegation was also requested to comment on reports indicating that children from Angola were being trafficked to the State party and subjected to forced labour in the coal industry.

31. The Committee would welcome further information on the national mechanism for the identification, protection and safe return of victims of trafficking, including which State agency was responsible for its implementation and what its impact had been. How did that mechanism interact with the national mechanism for ensuring effective and timely coordination among stakeholders? He wished to know what assistance had been provided to the 60 victims of trafficking who had been identified since 2010 and whether they had received any compensation.

32. Lastly, he would like to know what specific role the public prosecution service played in investigating cases of human trafficking, especially in relation to forced child labour and the trafficking of women and girls for commercial sexual exploitation. He wondered whether any convictions for those offences had been secured in court and, if so, whether the penalties handed down had been commensurate with the seriousness of the crimes.

The meeting was suspended at 4.15 p.m. and resumed at 5 p.m.

33. **A representative of Namibia** said that the Office of the Ombudsman enjoyed operational independence and was considered part of the judicial apparatus only from a financial standpoint. Nevertheless, with a view to ensuring efficiency without compromising independence, the Government, in consultation with stakeholders, had drafted a bill to give the Office autonomy with regard to its budget, structure and recruitment, among other aspects. The bill had been placed on the Parliament's agenda for 2024 and should be adopted by the end of the year. While there probably were cases where government officials or agencies had not followed up on queries from the Office, they were the exception rather than the rule, and procedures were in place to correct such deficiencies or to refer complex matters to the appropriate authority.

34. When well-founded allegations of corruption were received, internal investigations were initiated either by the institution concerned or at the behest of the Ministry of Finance and Public Enterprises. The appropriate procedures were then followed if charges were warranted. Owing to ongoing litigation, he was not in a position to comment on the so-called “Fishrot” case beyond noting that the delays were due not to the unwillingness of the State but to other issues such as the recusal of judges and the complexity of the case.

35. The Witness Protection Unit had been established but still lacked sufficient financial and human resources. The Whistleblower Protection Act had been referred for further consultations on aspects that would probably include the issue of penalties for false reporting. The Government was under pressure to finalize the process.

36. The Constitution, the Criminal Procedure Act and the Police Act regulated the circumstances in which law enforcement agents were permitted to use force, though never excessive force. Basic police training covered the handling of a range of situations, including some where officers might be at risk. Regarding the issue of enforced disappearance and whether symbolic or financial compensation had been provided in such cases, which dated back to the time of the country’s accession to independence, Namibia had taken a deliberate decision to embark on a process of national reconciliation in the wake of its bitter history of division along racial lines. Revisiting old cases of human rights violations would not be conducive to unity or stability.

37. The Environmental Management Act enumerated the types of projects for which an environmental impact assessment had to be conducted prior to the start of any activities. Companies that began such projects without taking that initial step were liable to a fine of 500,000 Namibia dollars. Affected communities also had to be consulted. The Ministry of Environment and Tourism, the Ministry of Land Reform and the Office of the Ombudsman, among other entities, had a mandate to monitor such situations and intervene in cases involving alleged breaches of environmental provisions.

38. The coronavirus disease (COVID-19) pandemic had disrupted the activities of Parliament, which had not resumed its work in earnest until mid-2023. As it worked to clear the backlog, the Parliament had prioritized bills relating to gender equality in areas such as marriage, divorce and civil status. Polygamy was a complex issue regulated under customary law and was not practised uniformly across the country. Moreover, the Constitution recognized certain cultural values and practices. It was difficult to ask people whether they had entered into marriage freely, and the Government should not be perceived as limiting individual choice, especially in private matters. Nevertheless, there were procedures in place for situations where a relationship, whether polygamous or monogamous, was found not to have been entered into with the full and free consent of both parties.

39. The ministry responsible for gender equality was working to develop a new plan to address issues identified through the implementation of the National Plan of Action on Gender-based Violence that had ended in 2023 and some of the resulting recommendations. The new plan would cover a specified period but no timeline for its implementation or details of its content were available as yet.

40. In line with the constitutional requirement that all persons must be treated equally before the law, various measures and policies were in place to address discrimination and issues of accessibility affecting persons with disabilities. Specific provisions were set forth in the Labour Act of 2007 and the National Disability Council Act of 2004. Institutions required to provide services for all, such as the transport and education authorities, were under an obligation to ensure appropriate infrastructure and facilities; some municipal and regional by-laws established a requirement for buildings of a particular kind to incorporate certain basic features to accommodate persons with disabilities. The National Social Protection Policy providing for an increase in child disability grants had been implemented in the course of 2023.

41. Regarding concerns about a lack of access to health care in some segments of society, the Government’s policy was to conduct a needs assessment, focusing in particular on remote, rural areas, whenever capital projects such as the establishment of new health facilities were being considered. When particular needs were identified in a specific community, depending on the resources available, those needs were given priority. Health

policy also specified that new facilities and infrastructure must be designed to accommodate persons with special needs, including persons with disabilities, and similar requirements were incorporated in laws and by-laws.

42. The Supreme Court judgment interpreting aspects of the Immigration Act encompassed only those provisions that dealt with marriages contracted outside Namibia. The Supreme Court had refrained from addressing or interpreting the prohibited grounds of discrimination set forth in the Constitution, which, as things stood, excluded sexual orientation. All new laws, including those concerning marriage, divorce and civil status, had to be consistent with the Constitution. Regarding the common law offence of sodomy, the case currently before the High Court in which the parties were challenging the constitutionality of the offence dealt not only with sodomy but also with other unnatural sexual offences, some of which were clearly not consistent with the Constitution. Until the Court issued its ruling, sodomy remained a criminal offence, but one for which no person had ever been prosecuted.

43. The bill on preventing and combating torture had been brought before the Namibian Parliament but had been defeated and consequently referred back to the Minister of Justice for further consultation, in accordance with the usual procedure when proposed legislation raised concerns. It was not possible to provide a time frame for the bill's reintroduction. As Namibia was a party to the Convention against Torture, the definition of torture contained in the bill would be consistent with that instrument.

44. With regard to the budget allocated to the Office of the Ombudsman, it should be noted that, given economic conditions, inter-institutional competition for resources and debate as to what constituted a sufficient budget and which institutions should be given priority were commonplace. However, the Government of Namibia attached great importance to the protection and promotion of human rights and endeavoured to provide the Office of the Ombudsman with sufficient resources to execute its mandate. It also endeavoured to ensure adequate funding for plans to bring conditions in the country's prisons into line with the basic standards set forth in ratified international instruments.

45. Child labour was outlawed pursuant to the Constitution and the Labour Act, and Namibia had ratified the International Labour Organization (ILO) Minimum Age Convention, 1973 (No. 138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). The current budget provided for an increase in the number of labour inspectors so that they could conduct inspections in rural areas where private businesses might be employing minors, as well as in urban areas. The issue of the recruitment of undocumented workers from Angola had been elevated to the intergovernmental level; relevant legislation and measures were in place in Namibia, but action by the Angolan authorities was needed to address the factors driving children to travel to Namibia in search of employment, which in some cases resulted in their exploitation. To that end, the Namibian Minister of International Relations and Cooperation had recently visited Angola to engage with relevant government counterparts.

46. **Ms. Donders** said that, while polygamy was indeed a complex issue, it was important to bear in mind the significant gender aspect of a practice that allowed men to have more than one wife but not the reverse scenario. Furthermore, while polygamy might be part of the culture of certain communities, cultures were not static. She therefore wished to know what the State party was doing to promote change; marriage might be a private decision, but it should always be a voluntary one and women must be educated to enable them to make informed choices. She invited the State party to provide more details about its gender-based violence protection units and shelters, including information about their staffing and accessibility at weekends and outside working hours, and about the Abortion and Sterilization Act, including information on the administrative requirements set forth therein and the ongoing debate regarding a possible broadening of access to legal abortion.

47. **Mr. Soh** said that he would appreciate an explanation as to why the State party had no plans to amend the 2007 Labour Act to prohibit discrimination on the basis of sexual orientation. He would also like to receive a response to his question regarding discrimination against persons with albinism.

48. **Ms. Kpatcha Tchamdja** said that, although revisiting past human rights violations such as enforced disappearance could be painful, the State party would be well advised to reflect further on what it might do to ensure that the relatives of disappeared persons felt that their situation had been taken into account.

49. **Mr. Quezada Cabrera** said that he would like a more detailed response to the concerns raised earlier in the meeting and in the list of issues (CCPR/C/NAM/Q/3, para. 11) about the fact that sex workers who were victims of crime felt unable to report offences to the police for fear of facing prosecution for their occupation. Referring to the 60 victims of trafficking identified since 2010 according to the State party's replies to the list of issues (CCPR/C/NAM/RQ/3, para. 67) – a number that undoubtedly did not reflect the true situation – he asked what assistance of a legal, psychosocial, medical or other nature had been provided to those 60 victims and whether they had received any form of compensation.

50. **Mr. Yigezu**, noting that the bill to make the Office of the Ombudsman independent of the Ministry of Justice had been before Parliament for a very long time, said he hoped that a timeline for its adoption would be set in the near future. With regard to the constraints on the Office's budget, he wondered whether the State party had considered seeking alternative, external funding sources. He would appreciate statistical data on the number of persons who had been investigated and charged in corruption cases and details of how the cases had been handled. He would also like information about any plans to amend section 49 of the Criminal Procedure Act and any other legal provisions that might authorize the excessive use of lethal or non-lethal force.

51. **Ms. Tigroudja**, noting that Namibia had apparently been planning to ratify the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights before the COVID-19 pandemic had necessitated an adjustment of parliamentary priorities, asked whether the consultations were continuing and what progress had been made.

The meeting rose at 6.05 p.m.