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Summary record of the 4082nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 7 March 2024, at 10 a.m.

Chair: Ms. Abdo Rocholl

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The meeting was called to order at 10.05 a.m.

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

Third periodic report of Namibia (continued) (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. **The Chair** invited the delegation of Namibia to reply to the questions raised by Committee members at the previous meeting.
3. **A representative of Namibia** said that any marriage, polygamous or monogamous, must by law be based on the voluntary consent of the parties and that marriages that were not based on voluntary consent were thus considered to be illegal. Namibia was a multicultural country with a diverse society, and the Constitution provided that every person was entitled to practise any aspect of culture, including polygamy, provided that doing so did not impinge on the rights of others or the national interest. Women who were abused or exploited in situations of polygamy could receive protection and assistance through facilities such as shelters; every police unit had reception facilities for persons in need of such protection. Psychosocial support was provided by numerous social workers located throughout the country. Victims of exploitation or abuse could also bring cases before the courts.
4. The Ministry of Gender Equality, Poverty Eradication and Social Welfare had established about a dozen shelters throughout the country for victims of gender-based violence, some of which were run by the Government and others by private organizations with funding from the State. The Ministry had reported that some of the shelters were not operating properly and that it had begun addressing the problem by mobilizing the required human and financial resources. The Minister was deeply committed to ensuring support for victims of gender-based violence, who were considered a particularly vulnerable group.
5. The Abortion and Sterilization Act dated back many years. The authorities were aware of the problem of illegal or unsafe abortions and had taken steps to open a dialogue on the matter to determine whether the Act should be amended. Under the law, no one could be forced to undergo abortion or sterilization; informed consent was required. The Ministry of Health had simplified the relevant forms to allow as many people as possible to give informed consent when they wished to do so. Abortion was a sensitive issue eliciting strong emotions. A parliamentary committee was currently holding public hearings throughout the country to seek input and gauge the views of the public on possible amendments to the Act.
6. One member of the Committee had raised the question of whether the Government intended to amend the Labour Act to prohibit discrimination on the grounds of sexual orientation. While such discrimination was not expressly prohibited in the Constitution, persons with different sexual orientation enjoyed the protection of the law under numerous pieces of legislation that ensured equality and dignity.
7. Albinism was categorized as a disability in Namibia and persons with albinism were entitled to a disability grant, special scholarships and personal care items, such as sunscreen, funded by the State. Regarding the claim that sex workers and victims of sexual abuse by police officers feared reporting their cases to the police, such persons were able to file complaints with separate police units that specialized in handling cases of gender-based violence or sexual abuse. Concerning the support provided to the 60 trafficking victims who had been identified, the State had provided them with accommodation, travel documents and funding to enable them to return to their countries of origin.
8. **Mr. Yigezu** said that the Committee had received reports of excessively lengthy pretrial detention, a shortage of qualified magistrates, prosecutors and court officials and large case backlogs resulting from the lack of a plea bargaining system. Government figures showed that over half the prison population consisted of prisoners awaiting trial, including many people who had been held for years, which contributed to overcrowding. He would appreciate information on the steps that had been or would be taken to develop alternatives to pretrial detention, including the use of affordable bail, and on any plans to provide more resources and improved methods of case management, including judicial monitoring of

detention exceeding the constitutional remand period. The delegation was also invited to specify what steps would be taken to reduce overcrowding, for instance through the use of non-custodial sentences such as community service orders, and to improve sanitation, medical services and food in places of detention. Would the Government take action to ensure that juveniles in custody were always held separately from adult offenders?

9. **Mr. Soh** said that he would like the delegation to comment on reports that refugees were unlawfully detained at police stations and to explain what safeguards were in place to ensure that the detention of immigrants was in compliance with international standards. He invited the delegation to describe the steps involved in refugee status determination procedures and the measures taken to ensure that all asylum-seekers received information on asylum procedures in a language they could understand, could access legal assistance and had the opportunity to appeal against the denial of refugee status. The residents of the Osire refugee settlement were reportedly facing an alarming situation where food, water, health services and employment had become scarce and assistance had been cut back. The Committee would like to hear about any initiatives aimed at providing social services in the settlement and at facilitating its residents' access to the labour market. It would also appreciate information on the number of refugees and asylum-seekers who, during the reporting period, had been granted employment permits or exit permits allowing them to leave settlement areas.

10. Noting reports that there had been numerous incidents of data breaches and cybercrime, he asked when the data protection bill and the cybercrime bill were likely to be adopted and why their enactment had been delayed. A provision of the regulations relating to the Communications Act that would require the registration of SIM cards beginning in April 2024 had raised concerns regarding threats to privacy, possible identity theft and barriers blocking members of marginalized groups from accessing information and communication services. He asked the delegation to specify how the database for SIM registration would be managed and whether appropriate safeguards were in place to prevent hacking, data leaks and unauthorized access by private persons and State authorities. What judicial or legislative authorizations were required for State authorities to access the database? The Committee would like to know why such a mandatory registration system and lengthy data retention period were necessary and proportionate for achieving the State party's intended objectives. It would also welcome more details on the planned establishment of interception centres under the Act.

11. He invited the delegation to elaborate on the contents of the national plan of action on violence against children, including measures to provide medical and psychosocial care for victims and to effectively address online child sexual exploitation and abuse. How did the Children's Advocate proceed when complaints were received, and how many complaints had been received and investigated? What was the expected time frame for the adoption of the child justice bill?

12. The delegation was requested to elaborate on the implementation of the recommendations of the study on child marriage conducted by the Ministry of Gender Equality, Poverty Eradication and Social Welfare, including plans to further develop relevant legal and policy frameworks. The Committee would like to know how many investigations and prosecutions of child marriage had been conducted under the Child Care and Protection Act and the sanctions handed down. Lastly, he asked the delegation to inform the Committee of any specific initiatives aimed at increasing birth registration among marginalized groups, including the San Indigenous communities.

13. **Mr. Quezada Cabrera** said that he wished to know whether the authorities had allocated additional resources to the Directorate of Legal Aid in the Ministry of Justice or taken any other steps to increase the number of legal aid counsel to provide free legal aid, especially in rural areas. It was unclear whether the State party had increased the annual budget allocation for legal aid in order to meet the growing demand for it. He would appreciate more details on the functions of the Office of the Judiciary and on how the separation of its functions from the Ministry of Justice helped to enhance the independence of the judiciary.

14. It would be interesting to learn how the State party ensured that the community courts operating within the customary law system exercised their jurisdiction in a manner that was consistent with the Covenant, with a particular focus on the due process guarantees enshrined in articles 2 and 14 thereof.

15. He would like to know whether the competent bodies had taken steps to address the censorship and self-censorship that employees of the Namibian Broadcasting Corporation and the *New Era* newspaper reportedly dealt with in their work. He was curious to hear the delegation's response to reports that journalists who had covered certain events and protests during the reporting period had been subjected to intimidation. He would be grateful for details of the amendments that had been made to the Namibian Broadcasting Act. It would be useful to know which minister was responsible for appointing the members of the Board of Directors of the Namibian Broadcasting Corporation and what safeguards were in place to avoid political interference in the appointment process. He would be interested to hear about how the members of the Board of Directors of the Communications Regulatory Authority of Namibia were appointed.

16. **Ms. Kpatcha Tchamdja** said that the Committee would like to receive statistical data on the criminal sanctions that had been imposed for the organization of or participation in a public gathering during the reporting period. She would welcome more information about the application of provisions of the Public Gatherings Proclamation that were not consistent with article 21 (2) of the Covenant, including in relation to the banning of a large protest concerning the high youth unemployment rate in March 2023. She would be grateful for clarification of whether spontaneous gatherings were permitted.

17. The Committee had received reports that rubber bullets had been used to disperse crowds during a protest against gender-based violence in October 2020 and a protest following the seizure of counterfeit goods in May 2022. It would be helpful to learn how the authorities had determined that the use of rubber bullets had been necessary and proportionate on those occasions. Moreover, it was unclear how section 6 of the Public Gatherings Proclamation, which authorized the use of firearms to disperse crowds if lives or "valuable property" were deemed to be at risk, was consistent with the relevant international standards. She would welcome details of how the bill on public gatherings that was due to be presented in 2024 would address the issues she had raised.

18. She wished to know whether the State party had taken, or planned to take, any measures to increase the representation of Indigenous communities at all political levels and to ensure their meaningful participation in policymaking and decision-making processes. She would also like to receive an update on the status of the white paper on Indigenous Peoples.

19. **Ms. Donders** said that she wished to know whether the State party intended to better elucidate the recognition of the rights of Indigenous Peoples, particularly in the light of its obligations under the Covenant and the United Nations Declaration on the Rights of Indigenous Peoples. She would welcome an explanation of the State party's practice of collectively referring to Indigenous Peoples as "marginalized communities". It would be useful to know how the State party ensured that recognition of traditional chiefs was based on objective criteria and not unduly influenced by chiefs' affiliation, or lack thereof, with the South West Africa People's Organization (SWAPO) political party.

20. In the light of the Committee's concluding observations on the second periodic report of Namibia ([CCPR/C/NAM/CO/2](#)), she would like to know what steps the State party had taken to obtain the free, prior and informed consent of Indigenous Peoples who were affected by development and exploration projects and to ensure that Indigenous Peoples had access to justice for the purpose of upholding their rights in that regard. She would be interested to know whether the State party planned to make reparations to Indigenous Peoples who had been affected by the environmental or other impacts of projects such as the exploration project that was being undertaken by ReconAfrica. It would be helpful to hear how the authorities ensured that environmental and human rights impact assessments were conducted correctly and whether Indigenous Peoples were meaningfully consulted as part of such assessments.

21. She wished to know more about the Government's position with regard to concerns about the fact that ancestral lands that had formerly belonged to Indigenous Peoples remained

under State ownership and often could not be used by such communities. It would be useful to know how the State party ensured that its laws and policies complied with articles 1 and 27 of the Covenant and whether it was considering the possibility of expanding or strengthening the arrangements for the management of ancestral lands by San tribes. She was curious about any steps the State party had taken to allow Indigenous Peoples a choice regarding the land to which they were relocated and whether it conducted any land-use planning studies prior to resettlement. She would welcome an account of the main conclusions of the review of the National Resettlement Policy and of how the authorities intended to respond to them. It was unclear whether ancestral ties were taken into account in the resettlement of Indigenous Peoples.

22. She wished to hear the delegation's response to concerns that the land provided to San tribes was unsuited to their hunter-gatherer lifestyle. She would appreciate details of how the State party ensured that resettled San groups were provided with the financial and technical support they required in order to establish viable communities. It was unclear whether Indigenous Peoples other than the San were eligible for resettlement. Lastly, she wished to know what steps the State party had taken to enforce the ban on the erection of fences on communal lands, as provided for in the Communal Land Reform Act.

The meeting was suspended at 11 a.m. and resumed at 11.35 a.m.

23. **A representative of Namibia** said that persons who were placed in pretrial detention were entitled to bring a bail application before the courts. Responsibility for excessively lengthy stays in pretrial detention could not be attributed to any one party; in some cases, for instance, it took time to find suitable legal representation, or accused persons required more time to prepare their defence. On the other hand, there were also systemic issues at play, including the fact that some courts had the capacity to handle only a limited caseload.

24. Police officers and prosecutors regularly received training designed to improve their management of investigations. Specialized training was provided on money-laundering and other types of cross-border crime.

25. The Namibia Correctional Service had instituted a five-year plan for the upgrading of prisons and the construction of new facilities. Juvenile detainees were always held separately from adult prisoners. In the majority of cases, juveniles in conflict with the law were not placed in pretrial detention, but were entrusted to their parent or guardian until they appeared in court.

26. Both the Government and the Office of the United Nations High Commissioner for Refugees (UNHCR) provided support to the Osire refugee settlement in the form of food, shelter and other basic necessities. The Government was seeking additional external support from, inter alia, the World Food Programme to ensure the continued provision of basic services to the settlement.

27. The data protection bill and the cybercrime bill had been in the pipeline for some time because of the complexity of the issues involved. Those bills were in the final stage of drafting prior to referral to the Cabinet Committee for Legislation. They would then be certified by the Attorney-General before being brought before the Parliament for consideration.

28. The requirement to provide some basic personal information in order to purchase a mobile phone SIM card was in place in many countries, not just Namibia. Such information was needed in the context of increasing online crime. Mechanisms were in place to safeguard the privacy of the information gathered, which was only intended to facilitate tracing of SIM card owners when necessary to combat or prevent crime, and was available only to certain authorities of the organization that collected it. Individuals' privacy, which was protected under the Constitution, was not compromised. Data were held for a period of five years in order to facilitate tracing procedures; that was a reasonable length of time.

29. Hacking and cybercrime were global problems that were difficult to tackle through legislation owing to their constantly evolving nature. In his experience working at the Communications Regulatory Authority of Namibia, it was very challenging for the authorities to keep up with technological advances in order to combat criminal activity.

30. Any interception of communications was dealt with in line with the Communication Act of 2009 and the Namibia Central Intelligence Service Act of 1997 and must be authorized by a judicial officer. Similarly, police officers were obliged to obtain a warrant from a magistrate or judge before carrying out searches.

31. The Child Care and Protection Act of 2015 was the key legal instrument for child protection. The Act set out protections against harmful cultural and religious practices. It prohibited child marriage, which was punishable by a fine of up to 50,000 Namibian dollars or a prison sentence of up to 10 years. The office of the Children's Advocate had been established under the Act to support children in conflict with the law and ensure that complaints from children were properly investigated. The Ministry of Gender Equality, Poverty Eradication and Social Welfare had put in place various programmes to address issues related to violence and exploitation through awareness-raising among families, traditional leaders and religious leaders.

32. The Ministry of Home Affairs, Immigration, Safety and Security had made efforts to accelerate birth registration, facilitating the processes in almost all regions and ensuring that every hospital had birth registration mechanisms. Mobile teams visited villages, communities and schools to issue identity documents and birth certificates to children who did not have them. Mothers could register children in their own name to obtain a birth certificate if the father refused to provide information for that purpose. There was an ongoing process to provide identity documents to those who were not registered to enable them to vote in the elections to be held November 2024. Resources had been allocated for that process.

33. The right to a fair trial was enshrined in the Constitution. For that reason, legal aid was offered to those who could not afford representation. There were around 70 lawyers available to provide such services. Legal aid had previously been provided only in the capital but was currently available in all magistrates' offices in all regions. The financial threshold to be eligible for legal aid was reviewed periodically. If the State was not able to provide legal counsel owing to staff shortages, private lawyers were used. That process was costly, so the Government was responsible for ensuring that the budgetary allocation for legal aid was continuously increased. In the 2024 budget, priority had been given to access to justice, reduction of case backlogs and provision of legal aid.

34. The community courts applied traditional or customary law in the communities concerned. Appeals against their decisions could be brought before the magistrates' courts and parties to the dispute could obtain assistance from the legal aid scheme if they qualified. The officers of community courts were trained in how to deal with human rights issues and adjudicate disputes. The standards in place for the officers who presided over those courts were in line with the provisions of the Covenant.

35. Namibia was a global leader in terms of freedom of speech and freedom of the press as a result of the political will of its leaders. Those freedoms were guaranteed under the Constitution and laws and were also observed in practice. Journalists were aware that they could publish criticisms of the authorities without risk of arrest. Significant efforts had been made in that respect and the nation as a whole recognized the importance of those freedoms. Concerning the question on self-censorship by State media, he wished to point out that all media outlets had their own editorial policies and standards on how they reported on certain issues. State media did not show bias in favour of the ruling party and gave coverage to all political parties. He was not aware of any evidence of self-censorship and would not be able to comment further on that issue without information on specific incidents. By law, the Namibian Broadcasting Corporation and the Communications Regulatory Authority of Namibia were independent; their affairs were regulated by their boards. The Government provided resources for those entities, but they also generated their own income and were not necessarily dependent on State funding. Under regulations introduced in 2015, the task of appointing the board members of State entities fell to the Minister of Finance and Public Enterprises. Before any appointments were made, the positions were advertised. Potential candidates were interviewed by a panel whose members were drawn from various governmental and non-governmental institutions, after which the panel made a recommendation to the Minister. The boards of public entities functioned independently; he was not aware of any cases of political interference. Board members were not government officials.

36. It was his understanding that the question about the safety of journalists related to an October 2020 demonstration against gender-based violence at which law enforcement had been obliged to step in to restore order. Journalists could have been caught in the crossfire. Demonstrators had blocked roads, which was not permitted. It was important that journalists should not join the protests on which they were reporting. Some people had been injured, which was unfortunate but related to the specific circumstances of that case.

37. Under the Public Gatherings Proclamation, persons wishing to organize protests or demonstrations had to obtain prior authorization from the Namibian Police Force. Authorization was never refused for gatherings that were considered lawful and met the conditions set out in the Proclamation. However, those that were likely to disturb the peace or to cause strife or violence within a specific community were not allowed to take place. All public gatherings were subject to the notification requirements laid down in the Proclamation. In managing public gatherings, the Namibian Police Force had to strike a balance between maintaining law and order and allowing individuals to exercise their democratic rights. That was not always a simple task, particularly in the case of unannounced demonstrations involving groups with opposing ideologies. The Government took the view that the limitations and conditions set out in the Public Gatherings Proclamation were reasonable and did not run counter to the provisions of the Covenant.

38. In the May 2022 incident, demonstrators who had threatened to destroy the businesses of Chinese nationals had been instructed to disperse by the Namibian Police Force but had refused. The police officers on the scene had then used a proportional amount of force against them to address the threat posed to the Chinese community.

39. He wished to clarify that all Namibians were considered Indigenous and that the Indigenous population included several marginalized communities. The native inhabitants of Namibia had been deprived of their lands as a result of the country's colonization by Germany and subsequent occupation by South Africa. After acceding to independence, Namibia had prioritized the restoration of land rights and access to land for all Namibians by adopting legislative and policy measures to that end, including a resettlement programme. While it had not been possible to resettle all Namibians in the areas where they had resided previously or to return to them the same land that had been appropriated by the colonizers, the resettlement programme ensured that they had access to land on which to build a home or from which to make a living.

40. The recognition of traditional leaders was regulated by the Traditional Authorities Act, which set out the criteria that communities must meet in order to be governed by a traditional leader. Any allegations that recognition was granted only to those traditional leaders who were aligned with the ruling political party were baseless, as no such requirement existed in Namibian law. Each application for recognition as a traditional leader was assessed on its own merits and the information submitted in such applications was verified to ensure that all the conditions laid down in the Traditional Authorities Act were met.

41. **Mr. Yigezu** said that, according to the information in the Committee's possession, many instances of excessively long pretrial detention were attributable to shortcomings in the justice system, such as delays in processing appeals and a shortage of qualified judges. Moreover, according to official government data, pretrial detainees accounted for 54 per cent of the prison population in Namibia, which was of great concern to the Committee, as it implied that detention might be arbitrary in many cases. Additional information on the steps taken by the State party to make greater use of alternatives to pretrial detention would be appreciated, as would details of any measures taken to improve conditions in police detention facilities.

42. **Mr. Soh** said that he would be grateful to receive statistical data on the number of refugees and asylum-seekers who, over the reporting period, had successfully obtained employment permits or exit permits allowing them to leave settlement areas. He wished to reiterate the Committee's concern that the existence of laws requiring the registration of SIM cards directly undermined anonymity and could enable State authorities to subject individuals, including journalists, to undue monitoring. He would welcome detailed information on how the SIM card registration database was managed and on the safeguards

in place to prevent hacking, data leaks and inappropriate access. Did the State authorities need to obtain a specific judicial or legislative authorization to gain access to that database?

43. **Mr. Quezada Cabrera** said that it would be useful to receive statistical information on the number of cases in which litigants who had filed an appeal with a magistrate's court against a decision of a community court had obtained assistance under the Government's legal aid scheme. He would also like to hear more about how the case records of community courts were reviewed and about the training dispensed to community court judges and assessors.

44. **Ms. Donders** said that she would appreciate further information on the measures taken or envisaged by the State party to ensure that all persons considered to be Indigenous, including the marginalized groups referred to by the delegation, could enjoy all the rights enshrined in the Covenant and in the United Nations Declaration on the Rights of Indigenous Peoples. It would also be helpful to hear more about the work carried out by the Commission of Inquiry into Claims of Ancestral Land Rights and Restitution, including its findings. She wondered what steps, if any, the State party had taken to obtain the free, prior and informed consent of Indigenous communities affected by development and exploration projects. An overview of the measures taken to ensure equal inheritance and property rights for all women and their children, including women in polygamous marriages, would also be welcome.

45. **Ms. Kpatcha Tchamdja** said that she would like to receive additional information on the State party's efforts to address the underrepresentation of Indigenous persons in government positions and to receive an update on the progress made towards adopting the white paper on Indigenous Peoples developed by the Office of the Ombudsman. Further details of the legislation addressing and combating discrimination against women and regulating customary marriages, inheritance and land ownership, mentioned in paragraph 19 of the State party's written replies (CCPR/C/NAM/RQ/3), would also be appreciated.

46. **Mr. Ndiaye** said that he wished to know whether the State party was making any efforts to preserve the memory of the victims of the colonial-era genocide carried out by Germany, whether Germany had started to honour its commitment to provide financial aid worth more than \$1 billion over a period of 30 years, whether Germany was also making symbolic reparation for the genocide and whether Namibia intended to play an active role in genocide prevention efforts going forward.

47. **A representative of Namibia** said that, during the colonization of Namibia, the occupying German forces had ordered the extermination of a large part of the native Namibian population and that, as a result, many Herero and Nama communities had been completely wiped out and their land and property appropriated. A few years previously, the Government of Namibia, in consultation with the affected communities, had entered into a dialogue with the Government of Germany on the subject. The first steps had been to seek acknowledgement from Germany that it had committed genocide in colonial-era Namibia and then to seek an official apology and reparations. While agreement had been reached on those three matters, other issues remained pending and were the subject of ongoing, confidential negotiations. However, despite the progress made in addressing the genocide, no amount of money could ever compensate for the loss of life and the suffering endured by the Namibian people at that time.

48. He was grateful to the Committee for the open and constructive dialogue and for the interest that it had shown in the human rights situation in Namibia. The delegation had taken note of the questions that it had been unable to answer during the dialogue and would submit its replies to the Committee in writing. The Government of Namibia remained committed to ensuring the enjoyment of all the rights enshrined in the Covenant and looked forward to receiving the Committee's recommendations, which would assist it in enhancing the implementation of existing laws and policies and in planning and enacting further legal and institutional reforms to that end.

49. **The Chair** said that she wished to thank the delegation of Namibia for having participated in the interactive dialogue with the Committee, which had covered a wide range of issues related to the civil and political rights enshrined in the Covenant. The delegation was requested to submit its written replies to the follow-up questions posed by Committee members within 48 hours so that the information provided could be reflected in the Committee's concluding observations.

The meeting rose at 1.05 p.m.