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The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva, and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit herewith **Namibia's response to the call for contributions dated 22 September 2022 by the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material.**

The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the OHCHR the assurance of its highest consideration.

**Office of the High Commissioner for Human Rights
GENEVA**





REPUBLIC OF NAMIBIA
MINISTRY OF JUSTICE

Information submitted to Special Rapporteur on the sale and sexual exploitation of children including child prostitution, child pornography and other child sexual abuse material.

1. What are the current needs of the child victims and survivors to redress and reparation both in conflict and non- conflict settings?

The current needs of child victims and survivors in non-conflict situation (as is the case for Namibia) are as follows:

1.1 *Psychosocial support and therapy:* there is an urgent need to address the impact of trauma.

The Ministry of Gender Equality, Poverty Eradication and Social Welfare (MGECW) provides for the National Agenda for Children (NAC) 2018-2022, which is a multi-sectoral five (5) year strategy focusing on child protection programming in Namibia. The main objective of this strategy, which is to ensure that the rights of the children are protected, is within the framework of higher-level strategies such as the Harambee Prosperity Plan and Vision 2030. The National agenda priorities are Child Protection and Social Protection; Child Education; Child and Adolescent Health, Child disability and Child Participation.

The MGECW at National level through the Permanent Task Force (PTF) is responsible for overall monitoring evaluation and implementation of National

Agenda for Children (NAC). There are also Regional and Constituency Child Care Protection forums (RCCPF) which are coordinating committees responsible for implementation of programs at regional and constituency levels. The role of the Regional Child Care Protection Forums is to identify and resolve regional challenges to ensure children access education, health care, protection, care and support services. Through the MGECW Secretariat, the RCCPF coordinate and monitor the Child Care and Protection Forums (CCPF) structure in the region, to ensure that Constituency CCP Forums are operating optimally.

The CCPF identify children who are at risk and who are not accessing critical services and refer these children (or their families) to existing service providers. The CCPF also monitors services to children and the response from existing service providers in the constituency, hold service providers accountable and disseminate information on children's services in their communities.

The Child Care and Protection Act under section 30 provides for the prevention and early intervention services. Prevention and early intervention services include providing psychological, rehabilitation and therapeutic programmes for children.

The Government continues to combat trafficking in persons through awareness, and capacity building of service providers. It has improved the identification and reporting of cases and providing shelter to Trafficking in Persons (TIP) victims, repatriation and reintegration of victims. In this regard, the Government established a Cabinet steering committee in 2016 to strengthen inter-ministerial coordination on trafficking cases.

Namibia continues to provide psychosocial support of care to children and vulnerable youth as part of its obligations towards the best interest of the child under domestic, regional and international law.

- 1.2 ***Alternative care options and support:*** child victims and survivors require alternative care placement, as kinship care might not be an option because parents/family members might be the perpetrator of these crimes against children.

The Child Care and Protection Act makes provision for alternative care options and support.

In instances where the parents/family members might be the perpetrator of these crimes against children, criminal charges are laid against the parents/family members. Such children are then removed and placed in protective services. The Ministry of Health and Social Services in collaboration with civil society organization has an effective parenting program in place aimed at building capacity of parents and supporting parents who are challenged with parenting skills.

- 1.3 ***Education and Skills development:*** there are cases where children are not able to continue with their education. In this regard, it is necessary to facilitate the continuation of their education or in other instances skills development. The Government has implemented the National Gender Policy (2010-2020), which intends to promote and protect the rights of girls and eliminate discrimination against them in education and training. The policy promotes the effective implementation and monitoring of laws pertaining to child support and encourage financial, psychological, moral and spiritual support by both parents. It advocates the elimination of injustices and obstacles faced by the girl child in relation to inheritance. It promotes the participation of girls in sport, educational and cultural activities.

The Government had improved access to education to all children by eliminating all types of hidden or additional fees in school system. In 2013, the Government has implemented the universal Primary Education for primary school in line with Article 20 of the Namibian Constitution. Multiple policies were adopted to improve access to education, such as Education Sector Policy for Orphans and Vulnerable Children (2008), Sector Policy on Inclusive Education (2013), the implementation of Universal Free Primary Education (2013) and the Education Sector Policy for the Prevention and Management of Learner Pregnancy (2009).

- 1.4 ***Access to quality health services:*** some children require continuous medical care. The Government implements the **Adolescent and Young People Job Aid**

as a desk reference tool for primary level health care providers. This is to ensure that children and youth in general receive quality, accessible and inclusive health care services because primary health care providers tend to be first point of contact for many children and youth at health care facilities.

All Namibians have access to health facilities in the country. The Government has adopted a fee waiver policy for people from vulnerable groups, which include children, persons with disability, older persons, and pregnant women. The National Health Policy Framework 2010-2020 is in place and it provides an overall orientation for health and health actions in Namibia.

- 1.5. **Legal services:** *Legal services are essential* especially if the child victim's intent to pursue a civil claim against the perpetrator. Including access to information on the case from the prosecuting authority;

In terms of the Child Care and Protection Act, a staff member of the Ministry who is authorised by the Minister and the Children's Advocate has the right to be a party to any proceedings before a children's court in terms of this Act involving a particular child or children in general and any child who is affected by a matter to be adjudicated in the children's court is automatically a party to the proceedings in question.

Section 54 of the Child Care and Protection Act further provides that Children's court hearings must, as far as is practicable, be held in a room which is - (a) furnished and designed in a manner aimed at putting children at ease; (b) conducive to the informality of the proceedings and the active participation of all persons involved in the proceedings without compromising the dignity of the court; Republic of Namibia 43 Annotated Statutes Child Care and Protection Act 3 of 2015 (c) not ordinarily used for the adjudication of criminal trials; and (d) accessible to disabled persons and persons with special needs.

The Child Care and Protection Act under Section 58 provides a child who is a party to any legal proceedings to have a legal practitioner of his or her own choice.

The Act further mandates the appointment of legal representation for a child who is without a legal practitioner and to consider the child's age, level of maturity and development.

Section 62 of the Act provides for the confidentiality of records of children's court proceedings. The records can only be disclosed in the following circumstances: (a) for the purpose of performing official duties in terms of this Act; (b) in terms of a court order if the court finds that disclosure is compatible with the best interests of the child; (c) for the purpose of review or appeal; (d) for the purpose of investigation by the Children's Advocate; or (e) for the purposes of research carried out on behalf of or authorised by the Minister, the Children's Advocate or the Council.

- 1.6. ***Access to national documents:*** In some cases, children lack national documents, or their status cannot be confirmed, there is a need to ensure that they get some form of status in the State where they find themselves.

The Namibian constitution by virtue of Article 15 provides that children have a right to a name and nationality. The Ministry of Home Affairs, Immigration, Safety and Security is responsible for the provision of national documents. The Ministry has established offices in all regions, to encourage early birth registration. The Ministry also provides documentation for identification of all non-citizens to reside freely in the country which includes children.

- 1.7. ***Provision of support services during trial:*** The support services include court preparation, provision of special measures for child witnesses – to ensure that they are not re-traumatized and expediting the criminal case- to ensure that the child victim can move on with their life.

- 1.8. ***Continuous needs assessment:*** The needs of the child victims may evolve therefore it is necessary to ensure that there are consistent and continuous needs assessment throughout the process to be effectively responsive to the needs of the

child; and

- 1.9 ***Protection services:*** Child victims need to be protected from the perpetrator and other individuals who might have an interest in the case.

The Criminal Procedure Amendment Act, 2003 (Act No. 24 of 2003) makes provisions for the protection and support of vulnerable witnesses and for special measures to be applied. In enhancing the protection of child victims, social workers and prosecutors have been trained on child witness support and protection.

2. **What are the gaps and challenges within the ambit of the international human rights and humanitarian law, in terms of both the existing framework and the implementation status to address the needs of the child victims and survivors?**

There is a need for strengthened international legal framework that promotes inter-country cooperation between states to deal with cases which have cross-border elements. The legal framework should provide for measures that facilitate the repatriation of children from another state in cases of trafficking in persons and child exploitation. This is critical to ensure continuous safety and protection for the victims or survivors, and to ensure that adequate safeguards exist to ensure that children are not placed back in high-risk situations or environments.

Namibia has an obligation under the Child Care and Protection Act, 2015 (Act No. 3 of 2015) to take measures to recognise the suffering of the victims and provide appropriate remedies. These measures can be achieved by means of restitution and steps aimed at restoring victims to their original circumstances prior to violations; compensation for the damages or loss suffered; rehabilitation to provide provisions relating to health, social, or legal services, satisfaction are measures aimed at acknowledging responsibility for past abuses and the suffering of victims and lastly, guarantees of non-repetition which are efforts to prevent future violations.

3. What measures can be taken to overcome these gaps?

Develop an international legal framework with implementing guidelines on child victim reparation.

The Child Care and Protection Act does not specifically provide for reparations but section 234(1) provides that a person may not use, procure or offer a child to be recruited, procured, enlisted or employ a child in any national, private or foreign armed or security force or cause such child to be used in any armed conflict; use, procure, offer or employ a child for purposes of commercial sexual exploitation; induce, procure, offer, allow or cause a child to be used for purposes of creating child pornography, whether for reward or not.

The Act further states that, a person who becomes aware of a contravention of the provisions of subsection (1) must immediately report such contravention to a member of the police who must, within 24 hours, refer the child concerned to a designated social worker for an investigation in terms of section 139. The penalty clause for contravening the above section is that the person is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Child victims and survivors have the right to institute civil proceedings and claim damages from perpetrators or other parties involved in the criminal or harmful acts committed against them.

4. Who are the duty bearers to define, implement and provide the reparation to child victim and survivors? In what form should the reparation be provided; how should they be assessed?

The duty to device relevant policies that provide for the access to reparations and set implementation criteria through government structures lies with States. The

judicial infrastructure should be specifically mandated to make rulings/findings for appropriate reparations as courts hold perpetrators and other parties accountable. The form or type of reparation should be dependent on the nature of the case and the needs of the child victim and survivors, including appropriate monetary amount.

5. How do we identify and delineate the roles of state, non-state and individual actors to ensure that reparation reach the child victims and survivors?

The implementation of reparation should be clearly outlined in the legal frameworks by each country. States will have to identify transparent and cost-effective implementation mechanisms that ensure that the best interest of the child is prioritized, and curb against mismanagement, corruption and diversion of reparations intended to benefit child victims and survivors. The legal framework should allow for the appointment of State entities, independent persons, or non-state entities to manage the reparations paid to benefit the child victim and survivors especially where guardians and family members are ineligible to care for the child. This will require that countries to review their legal frameworks and incorporate reparation clauses for child survivors/victims, and this legal framework can also clearly delineate the roles of state, non-state actors.

6. What measures are put in place to hear and understand how child victims and survivors would perceive meaningful reparation?

The process should incorporate meaningful participation by child victims and survivors in determining the value of reparations. This means that state parties should avail counsellors/legal representative who will provide child survivors and their representatives with sufficient information to ensure that they arrive at an informed decision and outcome. These mechanisms should be built into the legal framework on reparation.

7. What role do civil society organizations and victims groups play in devising

consulting and developing various reparation measures and programmes?

Civil society organizations have a greater role to play in:

- (a) Identifying victims and survivors who might require reparation.
- (b) Facilitating the participation of child victims and survivors in the consultation and determination of the value for reparations.
- (c) Providing a monitoring and evaluation role or supporting State efforts in monitoring to ensure optimum benefit to the child victims and survivors from the reparations program.
- (d) In addition, civil society are key stakeholders in designing reparation programs, policies, and mechanisms.

8. What are the good practices initiated by the stakeholders, and what remaining areas of intervention need to be introduced and/or improved?

Victims of crimes in Namibia have two options to seek compensation for damages from the crime committed against them. They have an option to bring civil proceedings for damages or they can seek compensation under the Criminal Procedure Act 51 of 1977, although the compensation under this Act is in respect to damage to or loss of property which includes money, and does not specifically authorise compensation for physical and psychological harm to a person.

The Criminal Procedure Act 25 of 2004 by virtue of section 326 includes a provision on victim compensation in respect to all crimes. It covers injury, damage or loss, whether patrimonial or resulting from a criminal offence and includes elements to promote access to justice. The victims are informed of their rights to apply for compensation by the presiding officer. Victims compensation may be requested by the victim, the victim's legal practitioner or the prosecutor acting on instructions of the victim. The award of compensation can include the costs of legal representation for the victim if appropriate, the amount of an award must be proved on a balance of probabilities.

The Child Care and Protection Act by virtue of section 25 provides that, the Children's Advocate in the Office of the Ombudsman, is established in terms of Article 89 of the Namibian Constitution and is regulated by the Ombudsman Act, 1990 (Act No. 7 of 1990). The Children's Advocate is mandated to assist the Ombudsman in the performance of its functions relating to children in the following ways namely;

- (a) receiving and investigating complaints, from any source, including a child, concerning children who receive services under this Act or any other law or relating to services provided to children under this Act or any other law or concerning any violation of the rights of children under the Namibian Constitution or any law, and where appropriate, attempting to resolve such matters through negotiation, conciliation, mediation or other non-adversarial approaches;
- (b) monitoring the implementation of the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Child Care and Protection Act, and any other law pertaining to children including international obligations which are binding on Namibia;
- (c) bringing proceedings in a court of competent jurisdiction as contemplated in section 5(1)(a)(ii) (dd) of the Ombudsman Act, 1990 (Act No. 7 of 1990) to further the interests of children; and
- (d) raising awareness throughout Namibia of the contents of this law and the protection of children generally.

In terms of the Combating of Trafficking in Persons Act, 2018 section 26, the court that has convicted a trafficker may, at the request of the victim of trafficking or on its own accord order the convicted trafficker to compensate the victim of trafficking for any (a) damage to, or loss of property, including money, suffered by the victim; and (b) loss of income and support suffered by the victim.

9. How can states and other stakeholders deliver more effectively with respect to amplifying the effective implementation of meaningful reparation to child victims and survivors?

States should establish mechanisms that will incorporate the views of children and caregivers in the process of reparation. It is critical that the element of child participation in this process is amplified to ensure that reparation programs are not government driven but are needs-focused and responsive with full consideration of the views and expressions of the child.

The Ministry of Gender Equality, Poverty Eradication and Social Welfare provides for the National Agenda for Children (NAC) 2018-2022, which is a multi-sectoral five (5) year strategy focusing on child protection programming in Namibia. The main objective of this strategy, which is to ensure that the rights of the children are protected, is within the framework of higher-level strategies such as the Harambee Prosperity Plan and Vision 2030. The National agenda priorities are Child Protection and Social Protection; Child Education; Child and Adolescent Health, Child disability and Child Participation.

- 10. Within the purview of international cooperation, what specific measures should be taken based on the existing structures. What is needed for a more coordinated response by the States/other international actors to provide reparation to child victims and survivors?**

States should continue discussions towards tangible outcomes on the nature of the legal framework for reparations. International cooperation in this area can ensure development of domestic legal frameworks to establish a systematic and transparent approach to the reparation process. States can deliberate on the role of the Committee on the Rights of the Child as the monitoring body on the implementation of reparations framework.

End.