

BWS

Breaking the Wall of Silence

“BWS is a movement of concerned Namibians who endeavour by peaceful means to find a lasting solution for the human rights violations committed during the liberation struggle and to work towards genuine reconciliation and true democratic culture in Namibia”

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United Nations Human Rights Committee **Universal Periodic Review Working Group *Review of the Republic of Namibia***

Submission of the Breaking the Wall of Silence (BWS) - a Namibian NGO

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3 July 2010

Introduction

Breaking the Wall of Silence (BWS) wishes to provide its views to the Human Rights Committee for the consideration of the 10th Periodic Report of Namibia. In this submission, the BWS highlights several issues which it considers should be of particular concern to the Committee in its consideration of the Namibian report.

In particular, this submission relates to key human rights priorities and provides recommendations for Namibia to adhere to the respect, protection and fulfillment of human rights, consistent with its international legal obligations under the International Convention for the Protection of All Persons from Enforced or Involuntary Disappearances; Convention Against Torture; Universal Declaration of Human Rights; International Covenant on Civil and Political Rights (ICCPR) ratified by Namibia.

Atrocities and gross human rights violations by the Namibian Liberation Movement, the South West Africa People’s Organisation (SWAPO) during the Liberation Struggle.

BWS would like to bring to the attention of Universal Periodic Review Working Group the atrocities committed by the now ruling SWAPO Party during 1960-1989 in Angola, Zambia and Tanzania.

Trumped-up charges of spying for apartheid South Africa were leveled against innocent cadres of the liberation movement SWAPO during Namibia's liberation struggle. As a result, thousands of them were tortured and imprisoned by SWAPO in exile. An estimated 2000 innocent cadres - all members of SWAPO and most active soldiers of the armed wing of SWAPO, the People's Liberation Army of Namibia (PLAN), are listed as missing without any account made of their whereabouts by the now ruling SWAPO Party. Only 153 were officially released as a result of the UN Resolution 435 and repatriated to Namibia by the United Nations High Commissioner for Refugees (UNHCR) on 4th July 1989. Sixteen (16) SWAPO detainees escaped from the dungeons and returned to Namibia on the 8th August 1989.

The impact of the atrocities has caused endless suspicion, disunity, distrust and hatred amongst Namibians. To date, the Namibian authorities and the SWAPO Party have failed to take concrete steps to bring Namibia more fully into compliance with the International Convention for the Protection of All Persons from Enforced or Involuntary Disappearances; Convention Against Torture; Universal Declaration of Human Rights; International Covenant on Civil and Political Rights (ICCPR) ratified by Namibia, by:

- 1) **Denying the families of the missing persons the right to know the fate and whereabouts of their loved ones who disappeared during the 1960 - 1989 while in SWAPO's care and imprisonment;**
- 2) **Denying the survivors of the SWAPO dungeons effective remedy for the inhumane, degrading treatment and false allegations of spying for the South African Apartheid Regime; and**
- 3) **Failing to investigate and to establish the truth about what is today known as the SWAPO Spy Drama.**

BWS is concerned that the continued tension in the country is likely to lead to ethnic strife and civil disturbances with fatal consequences in the not too distant future. BWS is therefore committed to strive for justice and to unite the people of Namibia through national healing, justice, peace, stability and democracy.

BWS efforts to engage the Namibian Government and the ruling SWAPO Party Few examples (evidence available):

- 1) 3rd November 2000 – Letter to the SWAPO Secretary General, Hon. Hifikepunye Pohamba, and response was received on 7th November 2000 that SWAPO will not meet our delegation or receive any petition.
- 2) 16th June 2004 – Letter to Cabinet and received by Secretary to the Cabinet. A response was received on 25th June 2004 that he has no authority to receive the letter.
- 3) 24th June 2004 – Letter to Standing Committee on Defence and Security of the National Assembly. A response from its Chairman, Hon. Ben Amathila (SWAPO MP) referred us to the Standing Committee on Constitutional and Legal Affairs.
- 4) 13th July 2006 – Preliminary consultation was held at State House with the Minister of Presidential Affairs, Dr. Albert Kawana. BWS left a statement for the attention of the State President, HE Hifikepunye Pohamba and no response was received up to date despite several follow-ups.

- 5) 24th October 2006 – Notice of Motion on the SWAPO ex-Detainee Issue was tabled in the National Assembly but voted down by SWAPO Party before it was fully introduced.
- 6) 10th May 2007 – Letter to the State President, HE Hifikepunye Pohamba, as a follow up on the meeting 13 July 2006, no response received to date.
- 7) 26th November 2007 – Letter to Secretary General of SWAPO, Dr. Ngarikutuke Tjiriange, but no response received.
- 8) 21st February 2008 – Letter to SWAPO Secretary General, Hon. Pendukeni Iivula-Ithana. A telephonic response received upon enquiry is that the ex-Detainee Issue is not the only issue they are dealing with and that she will respond in due course. No response since then.
- 9) Media statements issued annually on the issue, the Government and the SWAPO Party simply ignore these statements or respond with silence.

Violation and disregard of Domestic and International Obligations by the Namibian Government

Article 144 of the Namibian Constitution is clear in proclaiming that the general rules of public international law and international agreements are part of the laws of Namibia unless otherwise provided by the Constitution or Parliamentary Act. International treaties and agreements that have been acceded to by the National Assembly are binding on Namibia and in principle self – executing. The Supreme Court of Namibia has confirmed that the International Covenant for Civil and Political Rights (ICCPR), which Parliament ratified in 1994, forms part of Namibian Law and its provisions must be given effect to. The UN Human Rights Committee has also commended Namibia for envisaging its international obligations to be a part of its domestic law.

It is critical to note that Namibia has signed and ratified Convention Against Torture (CAT) in 1994. Article 4 of CAT requires the state party to take such measures to establish jurisdiction over offences where the alleged offender is a national or as deemed appropriate. It is critical for the UPR to encourage the Namibian Parliament to pass a domestic legislation specifically and fully implement the CAT. This can open new avenues to claim relief for torture victims and dependants of those who died from torture or extrajudicial killings.

We would like to draw the attention of the Universal Periodic Review Working Group to the Supreme Law of the country, Chapter 3 (2) b and the African Charter on Human and Peoples Rights Articles; 1 to 7; The Universal Declaration of Human Rights, the Preamble thereof, Articles 1,2,3,5,6,7, and 8, The International Convention for the Protection of All Persons from Enforced Disappearances respectively.

The Constitution of the Republic of Namibia guarantees the Protection of Fundamental Rights and Freedoms, including protection of life, liberty and respect for human dignity. We would like to refer you to Article 8 (2) b. of the Namibian Constitution.

The continuous denial of the right to know is a crime; the families/relatives of the missing persons have the right to know the whereabouts of their beloved ones.

The survivors of the atrocities committed by SWAPO during Namibia's liberation struggle have the right to know why they were exposed to torture, cruel, inhuman and degrading treatment.

The treatment of 'silence' that SWAPO has applied over the past years, translates in continues torture for all those who are directly and indirectly affected by the rights via lotions by SWAPO in exile. Hence this is tantamount to not only denying the families/relatives of the missing persons and the survivors justice they deserve but also is depriving them of dignity.

BWS further wish to bring to your attention that the Namibian Government is in violation of its international obligations for failing to investigate and ensure effective remedy for the torture and disappearances committed by the SWAPO Party during the liberation struggle against its citizens.

Attributing the Commission of Pre-Independence Era Atrocities by SWAPO to the Government of Namibia.

The International Law Commission recently found that the conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of pre-existing State or in a territory under its administration shall be considered an act of the new State under the international law.

Liberation Movements are attributable to the new State that comes into existence as a consequence of these movements. Therefore it is the responsibility of the State to investigate and to effect remedy.

Factual Considerations

Factual considerations apart from the international obligations and responsibilities of the State are; that SWAPO as a liberation movement was recognised both by the Organisation of the African Unity (OAU) and the United Nations General Assembly (UNGA) - recognised explicitly as the sole and authentic representative of the Namibian people.

The liberation movement SWAPO continued and organised the new State and are known as the Ruling Party and still maintained its political power ever since. Fundamental human rights issues have been at the core of national political and social debate in Namibia in the last two decades but have been met with silence by the Namibian Government and the SWAPO Party.. Therefore the political context in Namibia is not conducive enough to any official investigation of the past.

Issues to be addressed:

- 1) Namibian Government should investigate the fate and whereabouts of the missing persons, who disappeared while under SWAPO's care in exile.**
- 2) The Namibian Government should take responsibility and effect remedy to the plight of the SWAPO ex-detainees.**

- 3) **Namibian Government should create a platform for national dialogue on establishing the truth about past rights violations.**
- 4) **Namibian Government should be obliged to implement the international instruments it has signed and acceded to, for example The ICCPR, CAT, etc.**

Recommendations

BWS urges the UN Human Rights Committee under the UPR mechanism to assist the Namibian Government to address the plight of the SWAPO ex-detainees and the families of the missing persons.

The Government of Namibia, led by SWAPO Party, has breached its national and international obligations in many respects. Since the liberation movement has become the ruling party, the political power remains with SWAPO till date, which make the political environment not conducive and left the survivors and families of the missing persons more vulnerable in all respects.