

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

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The United Nations Human Rights Committee

From: Former SWAPO detainees and families of the Disappeared

Compiled by: Breaking the Wall of Silence (BWS) Namibian NGO

TOPIC: Atrocities and gross human rights violations by the Liberation Movement, SWAPO during the Liberation Struggle.

Country: Namibia

Basis of Review: 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)

1. BACKGROUND INFORMATION:

The Breaking the Wall of Silence (BWS) would like to bring to the attention of the Working Group on Human Rights Council Universal Review Mechanism (UPR)

the following atrocities committed by now the ruling party South West Africa Peoples Organization (SWAPO) during 1960-1989 in Angola, Zambia and Tanzania. The Namibian government and the party in question has violated the international obligations, 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 mentioned period 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, (3) failing to investigate and to establish the truth about the SWAPO Spy Drama

Tramped up charges of spying for Apartheid South Africa were leveled against innocent cadres of the liberation movement, SWAPO during our liberation struggle.

Thousands of Namibians were tortured and imprisoned by the liberation movement, SWAPO. An estimated 2000 innocent cadres all members of SWAPO and most active soldiers of the armed wing of SWAPO (Peoples Liberation Army of Namibia; PLAN) are listed as missing without any account made of their whereabouts by now the ruling party SWAPO. Only 153 were officially released as part of implementation of the UN Resolution 435 and repatriated by the United Nations High Commission for Refugees (UNHCR) on 4th July 1989. Sixteen (16) SWAPO detainees escaped from the dungeons and returned to Namibia on the 08th August 1989.

The impact of the atrocities has caused endless suspicion, disunity, distrust and hatred amongst Namibians.

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 ruling party and the Namibian Government

Few examples (evidence available)

- **03rd November 2000 – Letter to the Secretary General, Hon. Hifikepunye Pohamba, response on 7th November 2000, that SWAPO will not meet our delegation or receive any petition.**
- **16th June 04 – Letter to Cabinet received by Secretary to the Cabinet, response 25th June04, that he has no authority to receive the letter.**
- **24th June 04 – letter to Standing Committee on Defence and Security, response from Hon. Ben Amathila, refer us to Standing Committee on Constitutional and Legal Affairs**
- **13th July 2006 – Preliminary consultation at State House, BWS left a statement for the State President, no response till date despite follow-ups**
- **24th October 2006 – Notice of Motion on the SWAPO ex-detainee issue, motion voted down by SWAPO before it was fully introduced**
- **10th May – letter to the State President Hon. H. Pohamba as a follow up on the meeting 13.07.06, no response till date**
- **26th November 2007 – letter to Secretary General of SWAPO, Dr. N. Tjiriange, no response**
- **21st February 2008 – Letter to SWAPO Secretary General Hon. P. Iivula-Ithana, telephonic response upon enquiry that its not the only issue they are dealing with and that she will respond, no response yet.**
- **Media statements issued annually on the same issue, the government and SWAPO simply ignore 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 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 your attention 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 of the missing persons have the right to know the whereabouts of their beloved ones.

The survivors of the atrocities committed by SWAPO during our 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 continuous torture for all those who are directly and indirectly affected by the rights violations by SWAPO in exile. Hence this is tantamount to not only denying the families of the missing persons and the survivors justice they deserve but also is depriving them of dignity.

The Breaking the Wall of Silence (BWS) would like to bring to your attention that Namibian government is in violation of its international obligations for failing to investigate and ensure effective remedy for the torture and disappearances committed by SWAPO during the liberation struggle against Namibians.

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 (attribution principle). Therefore it is the responsibility of the state to investigate and to effect remedy.

Namibia's international obligations are part of its domestic legal corpus Therefore the government of Namibia bears the responsibility for the rights violations under domestic and international law.

Factual considerations

Factual considerations apart from the international obligations and responsibilities of the state are; that SWAPO as a liberation movement was recognize both by Organization of the African Unity (OAU), the United Nations General Assembly (UNGA) recognized explicit as the sole and authentic representative of the Namibian people.

The liberation movement SWAPO , continued and organized the new state and are known as the ruling party and still maintained its political power eversince. Therefore the political context in Namibia is not conducive enough to any official investigation of the past.

Issues to be addressed:

1. The Namibian government to take responsibility and effect remedy to the plight of the SWAPO ex-detainees

2. The Namibian government to investigate the fate and whereabouts of the missing persons, who disappeared while under SWAPO's care
3. Namibian government to create a platform for national dialogue on establishing a policy on how to address
4. Namibian Government to take responsibility and investigate the atrocities committed during the liberations struggle
5. Namibian Government obliged to implement the international instruments they signed and acceded to eg. The ICCPR, CAT etc.

Recommendations

The Breaking the Wall urge the Human Rights Council 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 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.