

BWS

Breaking the Wall of Silence

“BWS is a movement of concerned Namibians who endeavor 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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The Breaking the Wall of Silence (BWS) would like to submit its second report to the Universal Periodic Review for consideration. It is worth noting that at least after thirty (30) years of consistent advocacy, lobbying and awareness raising, BWS succeeded to be accorded audience by the President of the Republic of Namibia, His Excellency Dr. Hage G. Geingob on 15 May 2019.

All relevant documents will be attached as annexures to this report for your information. Do not hesitate to seek clarity on this submission.

We remain committed to the UPR process and look forward to hear from you soon.

Regards



Pauline Dempers
Coordinator for BWS

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

For the consideration at the thirty-sixth tenth session of the UPR Working Group, 2 – 13 November 2020

13th October 2020

A. Introduction

Breaking the Wall of Silence (BWS) wishes to provide its views to the Human Rights Committee for the consideration of the 36th Periodic Review of the Republic 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 review.

The Committee must take note that this report is a follow up after the BWS submission in 2010 to the Universal Periodic Review as well as to the ICCPR (February 2016) in a joint submission with the Namibian NGO Coalition Report. Some aspects of the report may be a repetition and serves as an indication that SWAPO ex-detainee issue and Enforced Disappearances remain unresolved after 30 years of independence.

Please note, BWS efforts to engage the Namibian Government and the ruling SWAPO Party with factual examples were reported in the previous Universal Periodic Review (2010), therefore will not form part of this submission. The submission will also highlight the recent developments due to the consistent pressure, advocacy and lobbying of the BWS since our submission.

This submission is an indication of the long lingering issue of the SWAPO ex-detainee issue, despite the efforts made by the survivors and families of the disappeared persons. The submission is also an indication of the reluctance of SWAPO and the Namibian Government to adhere to previous recommendations by treaty bodies on the past human rights violations during the liberation struggle. 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 UN Treaty Bodies.

Latest developments (*Since our 3rd July 2010 submission the UPR Working Group*)

After thirty years of silence and rejection of efforts of the BWS to engage the Namibian Government, the President of the Republic of Namibia, His Excellency, Dr. Hage G. Geingob upon request agreed to meet with the survivors and families of the disappeared persons.

In September 2018 we wrote a letter to His Excellency Dr. Hage G. Geingob, President of the Republic of Namibia, for an audience to discuss the issue of human rights violations by the SWAPO movement in exile prior to Namibia's independence. The President of the Republic was gracious enough and afforded us the opportunity to meet with us at State House on 15th May 2019 to discuss our plight as ex-SWAPO detainees and relatives of disappeared persons.

Subsequent to the State House momentous meeting, and based on the personal request of H.E. Dr. Hage G. Geingob, President of the Republic of Namibia, we submitted proposals to his Office on 20th December 2019. A Detailed reports of our engagement with the President will be attached as an Annexure for the Committee's information. Present at this meeting were delegation of survivors and families of disappeared persons, media and from the government were;

His Excellency, Dr. Hage Geingob – President of Namibia

Hon. Nangolo Mbumba – Vice President

Hon. Saara Kuugongelwa – Prime Minister

Hon. Nandi Ndaitwa – Minister of International Relations and Cooperation

Hon. Albert Kawana – Minister of Fisheries

Hon. Sophia Shaningwa – Secretary General of SWAPO

Dr. Alfredo Hengari – Presidential Press Secretary

Summary of the Report to the President:

- 1) Based on restorative justice and human dignity in order to mend broken relationships by confronting the ugly past to be able to move forward as a people; and**
- 2) Premised on the Domestic, Regional and International obligations that Namibia is party to as standard-settings for respect for human dignity, and the promotion and protection of universal human rights.**

This approach of the surviving victims and relatives of missing persons is NOT premised on vengeance – that is the pursuance of criminal, judicial or retributive justice. It is rather based on restorative justice in order, to the extent possible, carefully and collectively identify and address the Lubango painful chapter with the view of healing the festering wounds and put things right.

1. Stigma, Dignity and Discrimination

During the encounter at State House on 15th May 2019, H.E. the President stated that there were neither courts nor due processes to deal with certain issues in the SWAPO camps and centers in exile. As such, mistakes were made during the SWAPO Spy Drama of the 1980's which led to fateful and fatal consequences for many innocent freedom fighters. Accusations of a very serious nature, especially of alleged spying, were and remain convictions in the court of public opinion because such allegations unavoidably lead to the loss of dignity and discrimination at many levels. The effects of being wrongly accused, the subsequent torture and extraction of false confessions leading to years of indefinite captivity in dungeons have been devastating - emotionally, physically, psychologically, and, in many instances, led to tragic deaths.

Apology is one of the key elements of restorative justice. Recent research from Ohio State University, US, has identified six (6) elements of an effective apology. The elements are 1) expression of regret, 2) explanation of what went wrong, 3) acknowledgment of responsibility, 4) declaration of repentance, 5) offer of repair, and 6) request for forgiveness. The ex-detainees and family members of the missing persons wholehearted embrace these essential elements of an effective apology since it would facilitate the healing of human relationships.

In the light of the above, the Survivors of the Lubango dungeons and the Families of the Disappeared proposed, as an effort towards restorative justice, that:

1. SWAPO Party and Government take appropriate action to remove the stigma from the victims of the Lubango dungeons, be they alive or dead, as an effort towards the restoration of their dignity by:

- acknowledging SWAPO's mistakes and wrongdoings; and
- Apologizing to the victims and their families, to facilitate the process of healing.
- Establish the impact of false accusations, torture, indefinite detention, killing, deaths and disappearances have on survivors and families of the disappeared persons

2. SWAPO Party and Government take appropriate measures to prohibit referring to or casting of aspersions to survivors of the Lubango dungeons, alive or dead, as spies, former spies, traitors and any defamatory language associated with the stigma, by issuing a directive to its members that prohibits such insults to SWAPO ex-detainees.

2. Enforced Disappearances/Missing Persons

When an individual goes missing as a result of enforced disappearances, the uncertainty has a profound long lasting effect on the loved ones. Disappearances create an immeasurable loss for which there is no closure or verification. Families of the disappeared have the right to know and a right to the truth. They need a space to express themselves about how they feel; they deserve to be listened to and be heard. Every disappearance violates a range of human rights including:

- Right to security and dignity
- Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment
- Right to humane conditions of detention
- Right to a legal personality
- Right to fair trial
- Right to a family life
- Right to life (if the disappeared person is killed or their fate is unknown)

With the above as sacrosanct guiding principles, the following was proposed for implementation:

1. Helping the Namibian people and the families of the unaccounted persons to know the whereabouts and the circumstances of their loved ones.
2. Finding the remains of those who have died in the dungeons and during torture sessions, to properly inform their families, facilitate the exhumation and proper reburial of those victims and the issuance of death certificates for the deceased persons.
3. Erecting a monument in honor and dignity of those who died while in detention to acknowledge their contribution towards the freedom and independence of Namibia.
4. Naming streets after those fine patriots who died while in detention or during torture.
5. Should there still be any SWAPO ex-detainee alive outside of Namibia, SWAPO Party and Government should reunite them with family to facilitate closure.

3. Establishment of a Presidential Committee/Commission

Establishing an independent committee comprised of a government official, a SWAPO Party official, a human rights activist, a civil society actor and representatives of the Survivors and Families of the Disappeared headed by a special presidential appointee to frankly interrogate the root causes of the Lubango saga and offer recommendations to the esteemed Office on how best to deal with the issue of restorative justice in respect of the Lubango victims.

The thematic issues not limited to be dealt with by the proposed Commission are:

- Truth seeking
- Acknowledgement and Apology
- Restitution and rehabilitation
- Memorialization

Factual Consideration for the Committee

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

In this context, Article 10(1) of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts is instructive. The Articles unequivocally provide that:

"The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law."

The liberation movement SWAPO continued and organized the new State and are known as the Ruling Party and still maintained its political power ever since independence on 21st March 1990. 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, in our view, is not conducive enough to any official investigation of the past.

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.

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.

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 disappeared 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 thirty (30) years, translates in continues 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/relatives of the disappeared persons and the survivors the 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 Namibia's citizens.

The Government of Namibia, led by the 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 to date, which makes the political environment not conducive and left the survivors and families of the disappeared persons more vulnerable in all respects.

The non-responsive and reluctant nature of SWAPO and Government over the past thirty (30) years is unacceptable and put the survivors and families of the disappeared persons in a more vulnerable situation.

Violation and disregard of Domestic and International Obligations by the Namibian Government and ruling party has a negative impact on the survivors and families of the disappeared persons.

In light of the above, the government breached its obligation and therefore are;

- 1) Denying the families of the disappeared persons the right to know the fate and whereabouts of their loved ones who disappeared during the liberation struggle 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.**

Recommendations for action

1. 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 disappeared persons to meet their demands for Restorative Justice as contained in their proposals to the Presidency on 20th December 2019. Put pressure and encourage the Namibian Government to establish a Presidential Commission by so doing create space for national dialogue comprising of relevant stakeholders, including the survivors, families of the disappeared and SWAPO representatives. BWS regard these as essential ingredients and components of healing, sustainable development, peace building, protection and promotion of human rights and a critical cornerstone for democracy building.
2. Namibian Government should investigate the fate and whereabouts of the disappeared persons, who disappeared while under SWAPO's care in exile and effect remedy.
3. The Namibian Government should take responsibility and effect remedy to the plight of the survivors of atrocities committed during the liberation struggle
4. 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. During the review 31 May 2011, Namibia accepted to ratify the Convention Against Enforced Disappearances therefore must honor its promise and ratify the Convention (CED).
5. It is critical for the Committee to encourage the Namibian Government to pass a domestic legislation specifically and fully implement the CAT, ratify Optional Protocol CAT OP). This can open new avenues to claim relief for torture victims and dependents of those who died from torture or extrajudicial killings.
6. 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.

Submitted by:

Pauline Dempers



On Behalf of BWS

BWS