

I. EXECUTIVE SUMMARY

1. This Stakeholder Report has been submitted under UPR in terms of paragraph 3(m) of HRC Resolution 5/1 of June 18 2007 as well as under Section B of the General Guidelines for the Preparation of Information under UPR. The Report has been authored individually by **Namibia's National Society for Human Rights (NSHR)**, hereinafter referred to as the "Author Hereof". It focuses on Namibia's non-compliance with the letter and or spirit of: (1) the UN Charter; (2) the Universal Declaration of Human Rights (UDHR); (3) the extra-conventional human rights mechanisms; and, (4) the conventional human rights mechanisms to which Namibia is party, as well as on the recommendations for the appropriate solutions to the shortcomings identified herein.

II. DE JURE BACKGROUND AND FRAMEWORK

1. The *de jure* human rights situation in Namibia ("the State under Review (SuR)") is measured against its international obligation to respect, protect and fulfill human rights.

A. Scope of International Obligations

2. Author Hereof is satisfied that SuR has ratified and or acceded to nine (9) UN sponsored international human rights treaties. However, Author Hereof also deplores SuR's failure to ratify or accede to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the OPCAT, and the International Convention on the Protection of All Persons from Enforced Disappearances.

B. Constitutional and Legislative Framework

3. SuR's Constitution is framed and premised upon the internationally negotiated Geneva Principles concerning the Constituent Assembly and the Constitution of an Independent Namibia of July 12 1982. The Constitution contains a permanently entrenched Bill of Rights (i.e. Chapter 3) which is wholly compatible with ICCPR. Author Hereof is satisfied that most, if not all, of the 20 provisions of the Bill of Rights can directly be invoked in SuR's national courts. Author Hereof also takes cognizance of the fact that, until Parliament decides otherwise, all existing international treaties binding upon SuR remain in force, and the general rules of public international law form part of the domestic laws of SuR as contemplated inter alia Article 144 of SuR's Constitution. Author Hereof notes with satisfaction that paragraph 5(5) of the Preamble to SuR's Constitution says that SuR has been established, *inter alia*, as a democratic State "securing to all our citizens justice, liberty, equality and fraternity" and that Article 1(1) of its Constitution defines SuR as a State founded upon the principles of democracy, the rule of law and justice for all.

C. Institutional and Human Rights Infrastructure

4. SuR's Constitution establishes the Office of the Ombudsman¹ as an independent body with, *inter alia*, powers to promote and protect all human rights as well as fair and effective administration, combat corrupt practices and protect the environment and natural resources.

¹<http://www.ombudsman.org.na/>

III. DE FACTO HUMAN RIGHTS SITUATION

5. Author Hereof is deeply concerned that SuR authorities largely only pay lip service to their international obligations, including:

A. Compliance or Non-compliance with Human Rights Mechanisms

6. SuR has, in many ways, failed to:

7.1. Submit regular reports on the said measures as well as on the progress made in achieving the observance of the rights recognized in such treaties;

7.2. Submit even a single periodic report under ICESCR. SuR's initial report under ICESCR was due on June 30 1997;

7.3. submit its second periodic report under ICCPR, which was due on January 8 2008;

7.4. Recognize the competence of CAT, CEDAW and CERD to receive and consider communications by or on behalf of individuals or groups;

7.5. Submit its fourth and fifth periodic reports under CEDAW, which were due on December 23 2009;

7.6. submit its second and third periodic reports under CAT, which were due December 27 1999 and December 27 2003, respectively;

7.7. Submit its second and third periodic reports in terms CRC. These reports were due on October 29 1997 and October 29 2002, respectively as well as initial report under Optional Protocol to CRC, which was due on May 16 2004; and,

7.8. Submit its initial report under the UN Convention on the Rights of Persons with Disabilities (CPD), which was due on March 6 2010.

8. Author Hereof is also concerned that, in the absence of their formal incorporation into domestic laws, with the exception of the Geneva Conventions, any other international treaties, to which SuR is party, cannot be enforced by the courts of SuR. Since all human rights are indivisible, interrelated and interdependent, Author Hereof deplores the fact that ESC and CP rights are not placed on the equal footing and are not given effect to at the same level. Currently, all CP rights are entrenched under Chapter 3 of SuR's Constitution, while the majority of ICESCR provisions are listed under Chapter 11, and, as such, they cannot be directly invoked in the national courts of SuR.

B. Cooperation with Extra-Conventional Mechanisms

9. Author Hereof regrets that, as of February 10 2010, SuR is not among the 68 UN Member States that have extended a standing invitation to any of the several UN Special Procedures or Thematic Procedures.

C. Equality and Non-Discrimination

10. Author Hereof is deeply concerned by the fact that, although women make up more than 50 percent of the country's two (2) million people, they continue unabatedly to be under-represented and or un-represented in the decision-making processes of SuR. Threats to their right to political security as well as forms of violence and discrimination against women remain pervasive. Author Hereof is deeply deploring SuR's non-recognition of customary marriages and the deprivation of the rights of women and children with regard to inheritance and land ownership contrary to the stipulations of Articles 3, 23 and 26 of ICCPR as well as about the widespread societal discrimination against, and marginalization, of women, sexual minorities and indigenous peoples as well as against persons with disabilities.

D. Right to Life, Liberty and Security of the Person

12. Author Hereof is also deeply concerned about the widespread practice of propaganda for war and incitement of national, racial or religious hatred as well as racism, racial discrimination, xenophobia and related intolerance coming especially from former President Dr. Sam Nujoma. We are also concerned that SuR has so far failed to implement the recommendations by the HRC Committee to undertake, as contemplated under Articles 6, 7 and 9 of ICCPR, extensive investigations in the gross human rights violations (including acts of torture, extra-judicial killings and disappearances) committed against the civilian population between 1994 and 2003 in the northern border areas of SuR. Author Hereof is also concerned about the chronic postponements of Lower Courts and High Court (HC) cases, resulting in congested court rolls and pervasive backlog of cases; as well as about the slow pace by which the Prosecutor General takes decisions to prosecute or *nolle prosequi* in criminal cases, as well as about the sloppy and sluggish Police investigations. This scheme of things is enormously contributing to delayed justice and denied justice resulting in prolonged pre-trial detention. Unremitting gross inefficiency and a lack of resources also continue unabatedly to mar SuR's system of administration of justice, especially in the Lower Courts Division. The right to a fair and speedy trial also continues to be undermined by the fact that numerous indigent trial-awaiting detainees remain in Police detention due to the never-ending lack of legal aid from the cash-stripped Directorate of Legal Aid.

E. Torture or Cruel, Inhuman or Degrading Treatment (TCIDT)

13. Author Hereof is gravely concerned; (1) at SuR's failure to promptly and impartially investigate and prosecute those responsible for past and present acts of TCIDT; (2) deploring the fact that there are no legal instruments in SuR dealing specifically with compensating victims of TCIDT; and, (3) the fact that procedures for obtaining redress, compensation, and rehabilitation continue to be inadequate and, in many cases, non-existent. By the persistent failure of SuR authorities to prosecute the more than 40 members of security forces accused of having in 1999 severely subjected the alleged Caprivi secessionists to TCIDT; and by the fact that, despite recommendations by the CAT Committee that it does so as a matter of priority, SuR has not integrated---as required by Articles 2 (1) and 4 (1) of CAT as well as Article 7 of ICCPR---the specific definition of the crime of torture into its penal legislation in terms that are legally consistent with the definition contained in Article 1 of CAT.

F. Enforced Disappearances

14. Author Hereof notes with deep concern that SuR authorities have so far failed to deal with gross pre-independence and post-independence human rights violations and that SuR authorities have persistently rejected repeated calls by Author Hereof to institute a truth and reconciliation commission (TRC) to address such violations. Author Hereof also strongly condemns SuR's persistent failure to implement the several CAT Committee recommendations that the cases of enforced disappearances of former members of the now ruling SWAPO Party in exile must be promptly and impartially investigated as contemplated under Article 12 of CAT.

G. Expression and Opinion, Freedom of Religion, Association, Peaceful Assembly and the Rights to Participate in Public and Political Life

15. Author Hereof is also deeply concerned that even though Article 21 of SuR's Constitution---read in conjunction with the *Kauesa* and *Smith* case laws---guarantees the right to freedom of speech and expression, including freedom of the press and other media, several high-ranking SWAPO Party and or SuR officials routinely launched vitriolic attacks directed *ad hominem* directed particularly at Author Hereof as well as at those exercising their freedom of opinion and expression. In this regard, Author Hereof condemns the ongoing ban on advertising in *The Namibian* newspaper and the summary cancellation on or around March 3 2009 of several popular radio phone-in programs on the publicly-funded Namibian Broadcasting Corporation (NBC) Radio.

H. Right to Work and to Just and Favorable Conditions of Work

16. Furthermore, Author Hereof is deeply concerned that trade unions that are not affiliated with the ruling SWAPO Party continue to be marginalized and that the independent trade unions are the main targets of this hostility coming from SuR authorities. SuR remains one of the countries with the highest unemployment rates in the world, which is in excess of 51 percent.

I. Right to Social Security and to an Adequate Standard of Living

17. Author Hereof strongly condemns the continuing poverty and extreme poverty and the gross income disparities prevailing unabatedly in SuR, with the result that SuR is rated as one of the world's worst income distributors among its population, with a Gini-coefficient ranging between 0.6 and 0.7.

J. The Right of Minorities and Indigenous Peoples

18. Author Hereof is deeply concerned that even though the law states that all indigenous groups should be allowed to actively participate in decisions affecting their lands, cultures, traditions and allocations of natural resources, indigenous groups, in particular the San people, still face systematic and widespread exclusion and exploitation. A major issue for minority groups in SuR is achieving political recognition.

K. The Right of Migrants, Refugees and Asylum Seekers

19. Author Hereof is deeply concerned that the rights of refugees and asylum seekers---which are of civil and political nature---are not listed under SuR's Bill of Rights. SuR authorities should institute proper procedures in order to comply with Article 3 of the Refugee Convention to enable refugees to

apply for residence in cases where substantial grounds exist for believing that they would be in danger of being subjected to summary execution, TCIDT and or enforced disappearance if expelled, returned or extradited to another country.

IV. SPECIFIC RECOMMENDATIONS

20. In the premises SuR authorities must:
21. Amend SuR's Constitution to place ESC and CP rights on the equal footing and to give effect thereto at the same level.
22. Systematically domesticate as a matter of priority all human rights treaties to which SuR is party;
23. Strengthen both the institutional and operational capacity of Ombudsman Office by providing such Office with adequate human and financial resources, so that it may be in a position to fulfill its mandate effectively and efficiently.
24. Introduce measures to reduce the huge accumulation of court cases resulting *inter alia* in illegal prolonged pre-trial detention, which violates the right for defendants to be tried within a reasonable time.
25. Enact a law defining the crime of torture in terms of Article 1 of CAT and should integrate this definition into SuR substantive and procedural criminal law system.
26. Establish without any further delay an independent national TRC to address past gross and systematic human rights violations.
27. Ensure the rights of citizens to effective access, on a non-discriminatory basis, and to participate in, the conduct of public affairs, which includes the right to form or join the political parties of their choice as well as to voice criticism regarding the functioning or non-functioning of governmental ministries, agencies and other organizations concerned with public affairs.
28. As a matter of priority, put an end to the widespread violence against women and must address the specific needs of women as well as those of the LGBTI community; bringing to an end all and any systematic discrimination, marginalization and exclusion of indigenous minority groups in the country, including especially but not exclusively the San (Bushman), Nama and Baster peoples;
29. The controversial marathon Caprivi High Treason Trial must be brought to its logical conclusion as a matter of priority and the more than 40 torturers of Caprivi detainees must be brought to justice as a matter of utmost urgency; and
30. SuR authorities must undertake prompt, thorough and transparent investigation of all human rights violations; in particular attacks against human rights defenders and journalists, in order to create a safe and enabling environment in which human rights defenders and media workers can carry out their activities without unlawful hindrances, including the use of hostile propaganda and other acts against independent human rights defender organizations in the country. END