

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 a true democratic culture in Namibia”

P.O. Box 40587
Ausspannplatz
Windhoek, Namibia
Tel: 264 61 263649
Email: survivor.july89@yahoo.com

5th February 2024

Dear Secretariat:

The Breaking the Wall of Silence (BWS) would like to make this submission to the United Nations Human Rights Committee in preparation for the review of Namibia under the International Covenant on Civil and Political Rights (ICCPR) for the 140th Session.

This submission is being done in terms of the first Optional Protocol to the ICCPR that allows individuals, whose countries are party to the ICCPR and the protocol, who claim their rights under the ICCPR have been violated, and who have exhausted all domestic remedies, to submit written communications to the UN Human Rights Committee.

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. BWS further wish to bring to the Committee’s 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 against its members during the liberation struggle.

We have full confidence in the ICCPR review process and look forward to hearing from the Secretariat at its earliest convenience. Please note that the Secretariat is at liberty to publish this submission on the Committee’s website.

Respectfully submitted,



Pauline Dempers
National Coordinator: BWS

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SUBMISSION TO:

THE UNITED NATIONS HUMAN RIGHTS
COMMITTEE, 140TH SESSION

FOR:

THE LIST OF ISSUES PRIOR TO REPORTING
FOR THE NAMIBIA’S 3RD PERIODIC REVIEW

HUMAN RIGHTS VIOLATIONS DURING NAMIBIA’S WAR OF INDEPENDENCE

Alternative Report Raising Issues Related to Articles 7, 9 and 10

Submitted by:

Breaking the Wall of Silence

February 2024

1. INTRODUCTION

Breaking the Wall of Silence (BWS) submits this brief to the United Nations Human Rights Committee in preparation for the review of Namibia under the International Covenant on Civil and Political Rights (ICCPR) for the 140th Session.

Operating as a non-governmental organisation, BWS is named after Siegfried’s Groth’s book *Namibia: The Wall of Silence*, and was formed at the occasion of the book’s release in 1996. Namibia’s independence movement, the South West Africa People’s Organisation (SWAPO), today the ruling party, detained, tortured and killed members of its own movement in the Lubango dungeons in southern Angola in the 1980s, the final years of the Namibian War of Independence. The victims included people that had previously been detained by the South African apartheid government, but also those members who were falsely accused of having turned against the liberation movement, and of spying on behalf of the oppressors.

Siegfried Groth, a German pastor in SWAPO’s refugee camps, exposed the atrocities at Lubango, causing the formation of BWS, a fierce debate on national reconciliation and a furious response from SWAPO and its government officials. BWS advocates for an acknowledgement of the SWAPO leadership’s abuses of power when in exile as well as for an official apology. However, BWS has had difficulties - within both the formal political arena and within civil society (including the churches, so important a sphere of Namibian life) - in setting the record straight about such events and/or in obtaining any kind of redress of grievances. The chief obstacles have been the unwillingness of the SWAPO leadership to allow its own record in exile to be opened up to public scrutiny and, indeed, its active role in discouraging any such outcome. The leadership’s advocacy of the wisdom of silence on these matters has tended to be cast in terms of the presumed imperatives of ‘reconciliation’, a policy which has much to do with the

leadership's seeking to hide the blood of the past that it has on its own hands. The Namibia Government and the SWAPO leadership have ruled out the possible applicability of such models as South Africa's process of 'Truth and Reconciliation' to resolving the issues in the immediate future in Namibia.

This submission outlines several of BWS's key concerns with respect to Namibia's compliance with the ICCPR in the wake of its persistent refusal to bring closure to the issue of gross human rights violations in Lubango, Republic of Angola, during the War of Independence. These concerns have a direct impact on the enjoyment of the right to dignity, freedom, and justice for many of the former detainees who are still alive after being subjected to torture, inhuman and degrading treatment; subjected to arbitrary arrest and detention; and deprived of their liberty, some for more than 10 years.

2. 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 dependents of those who died from torture or extrajudicial killings.

BWS 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 vialations by SWAPO in exile. Hence this is tantamount to not only denying the families/relatives of the missing persons and the survivors the justice they deserve but also is depriving them of dignity.

BWS is deeply concerned about the possible infringement of Articles 7, 9 and 10 of the ICCPR as a result of Namibia’s continued reluctant inadequate response to the plight of the victims of gross human rights violations during Namibia’s War of Independence.

3. BLANKET COLONIAL AMNESTY

The Government of Namibia continues to hide behind the blanket amnesty issued by the last colonial Administrator General, Adv. Louis A. Pienaar, and gazetted under the Amnesty Proclamation of 6 June 1989 under the powers vested in him by Proclamation 181 of 19 August 1977. BWS, however, does not look at the Amnesty Proclamation in isolation from events and negotiations that led to independence and freedom of Namibia. It is imperative to congruently engage and find linkages between the UN Resolution 435 (Namibia Peace Plan), the International Humanitarian Law and the International Human Rights Law to be able to understand and contextualise the controversial Amnesty Proclamation, which was and continues to be self-serving for the erstwhile war protagonists, protecting perpetrators at the expense of victims, undermining international human rights and humanitarian laws and denying the victims their rights to truth, justice, protection and effective remedy. Truth, knowledge and acknowledgement are goals for justice and are clearly outlined in the international human rights regime. The then incoming government led by SWAPO had agreed to this trade-off, not between the victims of the past abuses and gross human rights violations by SWAPO or apartheid South Africa, but between the perpetrators of such crimes, as it violates the general obligation of the State to protect and ensure fundamental rights, and guarantee that citizens enjoy these rights. It is against this background that BWS has rejected this blanket Amnesty Proclamation as it is unconditional and amounts to impunity. Also, the blanket Amnesty does not exempt the Namibian State from taking responsibility towards restorative justice for survivors and accounting for the disappeared dungeons victims.

4. GENERAL COMMENT NO. 33

Article 2 of the Optional Protocol requires that individuals who submit communications to the Committee must have exhausted all available domestic remedies. BWS efforts to engage the Namibian Government and the ruling SWAPO Party have proven futile. For example:

- 1) 3rd November 2000 – Letter to the SWAPO Secretary General, Hon. Hifikepunye Pohamba, and the 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.
- 10) 15th May 2019 - A delegation of BWS and some family members of the disappeared met with Namibian President and SWAPO Party President at State House, H.E. Hage Geingob, who rejected proposals to investigate crimes committed by the Swapo Party against its political prisoners during the liberation struggle. H.E. Geingob said an investigation into the matter could disrupt peace in the country.
- 11) 25th February 2021 – A BWS delegation met with Dr. Alfredo Hengari, the Presidential Press Secretary, at State House, to continue the dialogue where we left out with H.E. President Geingob. No promised feedback was received from State House.
- 12) 18th July 2022 – A BWS delegation met with Honourable Yvonne Dausab, Namibian Minister of Justice (MP), and Deputy Chairperson of the SWAPO Disciplinary Committee. The consultations are still ongoing, albeit slowly.

5. SEEKING RESTORATIVE JUSTICE

In September 2018 we wrote a letter to His Excellency Dr. Hage G. Geingob, the now late 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 then 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 missing persons. This meeting was attended, among others, by His Excellency Nangolo Mbumba, then Vice-President and now President of the Republic of Namibia; The Right Honourable Prime Minister, Dr. Saara Kuugongelwa – Amandhila, Hon. Netumbo Nandi-Ndaitwa – then Minister of International Relations and Cooperation and now Vice-President of the Republic of Namibia and Honourable Sophia Shaningwa, Secretary General of SWAPO Party.

Subsequent to the State House meeting, and based on the personal request of His Excellency the late Dr. Hage G. Geingob, then President of the Republic of Namibia, we submitted proposals to his Office on 20th December 2019.

The approach of the proposals is:

- 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 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.

The proposals of the Lubango survivors and families of the missing persons submitted to His Excellency the late Dr. Hage G. Geingob, then President of the Republic of Namibia and the SWAPO Party, were as follow:

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 centres 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
- apologising to the victims and their families, to facilitate the process of healing.

2. SWAPO Party and Government take appropriate measures to prohibit referring to or casting of aspersions to victims 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 for persons to know about 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 honour 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

Establishing an independent committee comprised of a government official, a SWAPO Party official, a human rights activist, a civil society actor and a 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 your esteemed Office on how best to deal with the issue of restorative justice in respect of the Lubango victims.

The thematic issues to be dealt with by the proposed Presidential Committee are:

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

6. 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.

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 organised 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.

7. RECOMMENDED LIST OF ISSUES TO BE ADDRESSED

BWS asks the Human Rights Committee to consider including the following recommendations in its concluding observations on Namibia:

- 1) Government complacency towards truth-seeking initiatives. Namibian Government should investigate the fate and whereabouts of the missing persons, who disappeared while under SWAPO's care in exile, a movement which, in 1976, recognised by the United Nations General Assembly in resolution 31/146 as "the sole and authentic representative of the Namibian people".
- 2) No full accounting by SWAPO of what really happened during the internal "purge" and no efforts to reach out to victims' families by the Namibia Government and SWAPO.
- 1) The liberation movement's internal "purge" resulted in the loss of hundreds of lives of those suspected as enemy agents or spies. The Security Department of SWAPO's Peoples Liberation Army of Namibia (PLAN) embodied a culture of intolerance towards those regarded with suspicion, especially minorities from south of the Red Line and intellectuals.
- 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, by forming a "presidential committee" that will gather testimonies of witnesses and victims and their families and make recommendations about justice and reparations.
- 4) The Namibian Government's lack of sensitivity to the liberation struggle-era human rights victims results in acts of re-victimization.

- 5) Restorative justice remains a challenge for Namibia. There is a need to join efforts in the fields of truth-seeking, accountability, and reparations, accompanied by reconciliation initiatives by various sectors of society at local and national levels. The right to a remedy and reparation are key components of most human rights treaties, including the African Charter on Human and Peoples' Rights ('African Charter').

Should the members of the Human Rights Committee or staff at the Office of the High Commissioner for Human Rights have any questions about this submission, please contact BWS's National Coordinator, Ms. Pauline Dempers (email: survivor.july89@yahoo.com).