

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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Date: 2 September 2016

H.E. Dr. Hage G. Geingob,
President of the Republic of Namibia
Office of the President
No. 1 Engelberg Street Auasblick, Windhoek
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Republic of Namibia

Your Excellency,

SUBJECT: REQUEST FOR PROVISIONAL MEASURES UNDER RULE 98 OF THE RULES OF PROCEDURE OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

In my capacity as the Chairperson of the African Commission on Human and Peoples' Rights (the Commission), I have the honour to bring to Your Excellency's kind attention Communication 595/15 - Secretary General of Caprivi Concerned Group v. The Republic of Namibia, which was seized by the Commission during its 19th Extra-Ordinary Session held from 16 to 25 February 2016, in Banjul, The Islamic Republic of The Gambia. The Communication was submitted against the Republic of Namibia (the Respondent State) in terms of Article 55 of the African Charter on Human and Peoples' Rights (the African Charter).

The Complainant in this Communication is the Secretary General of Caprivi Concerned Group (CCG), acting on behalf of the United Democratic Party (UDP) and all concerned Caprivians (the Victims). The Complainant submits that CCG is an advocacy and pressure group for human and peoples' rights based in the Caprivi Strip.

Your Excellency, the Complainant submits that on March 1990 and June 1999, the Respondent State illegally occupied and forcibly annexed the Caprivi Strip through Act 10 of 1999, which extended Namibian laws to Caprivi Strip.

The Complainant further submits that since 1998 the Respondent State has committed gross human rights violations on Caprivians, including summary executions, enforced disappearances, torture and unlawful detention amounting to oppression or state repression.

According to the Complainant, in 2004 and 2006, the Respondent State banned and denied registration of Caprivi based political parties, namely the UDP, Caprivi National Democratic Party (CNDP), and Candidature of National Unity (CaNU).

The Complainant avers that in July 2012, the Prime Minister of the Respondent State, Hon. Naha Angula rejected "compromise solutions such as political dialogue and/or referendum on the Caprivi political dispute." The Complainant adds that it was again rejected by Your Excellency, in August 2015.

The Complainant alleges that local remedies have been exhausted, as CCG has been attempting to enter dialogue with the Respondent State to consider a referendum since 12 April 2012, but its attempts have been repeatedly met with threats of treason and arrest by the Government.

In the Complainant's latest submission which requests Provisional Measures (herewith attached), the Complainant submits that on 11 February 2016, he was issued a forced transfer from where he worked as a teacher to another school in a remote and flood-prone area. He adds that before the transfer dispute was settled by the relevant authorities, he was issued a dismissal letter on 21 April 2016, and has since not received a salary. He indicates that in May 2016, the Trade Union Lawyers appealed his dismissal to the Office of the Prime Minister, but there has been no response.

The Complainant alleges that on 29 April 2016, the Inspector General of Namibian Police (NAMPOL) stated that "the so called Caprivi Concerned Group's agenda is nothing else than that of those who have been arrested for high treason... We are working hard to make sure that if they continue with the idea of Caprivi secession... they will face the same fate like those who were in court or are now behind bars."

The Complainant alleges that on the same day as the publication of the above threat the Deputy Chairman of CCG, Mr. Retief Kangongo went missing and was later reported to have fled to Botswana. He adds that CCG and his family do not know "the status or condition of Mr. Kangongo".

The Complainant further submits that on 17 May 2016, the Prosecutor General of the Respondent State filed a notice of appeal in High Court against 42 former Caprivi high treason (political) prisoners who were discharged, acquitted in 2013 and 2015 after

spending 14 and 16 years in maximum security prison respectively. The Complainant submits that he does not know the whereabouts of some of the defendants following the distribution of copies of notice to them by investigation officers.

The Complainant alleges that on 10 June 2016, the Governor of Zambezi region, Ministers and Members of Parliament in the Namibian government from the Caprivi Strip, and representatives of traditional authorities in Caprivi Strip held a joint press conference where CCG was denounced and once again threatened to be dealt with, and was accused of disturbing peace and stability.

The Complainant further alleges that on 22 July 2016, the Namibian Police Chief called on local government, government directorates and institutions not to avail public places or facilities to CCG members to hold public meetings. He also said that NAMPOL will not "allow secessionist ideas"; and called on his counterparts in Botswana, Zambia, and Angola that "if these CCG members come into your country to discuss treacherous ideas... catch them, bring them to us as Christmas boxes, we will deal with them. "He further warned that if he will command his forces "to take action, they will be ruthless."

The Complainant submits that on 26 July 2016, the Namibian Police Regional Commander in Zambezi region and four Crime Investigation Department (CID) officers met CCG leaders. The Complainant avers that one of the CID officers stated that CCG is a "threat imminent" because it advocates for the release of those convicted of high treason charges and also because it shares the same political objective as "those who attacked in 1999". The Complainant concludes that CCG is already condemned, and its leaders and supporters are about to "face the same fate as those who were in court or behind bars". The Complainant adds that his life and the represented victims are in imminent danger.

The Complainant alleges that CCG leaders were warned by a reliable source that the Respondent State has commissioned a hit-squad to eliminate CCG leaders particularly because CCG "reported about the mass grave" to the African Commission which would be construed as a war crime or a crime against humanity. The hit squad allegedly comprises ten combatants of the People's Liberation Army of Namibia (PLAN) who are believed to have had the same responsibility during Namibia's liberation struggle.

The Complainant indicates that on 14 July 2016, following a two day state visit by Your Excellency to the Republic of Botswana, the state television (NBC-TV) reported that Namibia and Botswana are to draft a boundary treaty which would involve demarcating the southern boundary line of Caprivi Strip. The report stated that representatives of the two countries met in Addis Ababa in June 2016 to discuss the boundary treaty, and they are to meet again to finalise the draft in Botswana, in August.

The Complainant submits that Caprivi Strip is a disputed/ contested territory both politically and legally, and should therefore not be the subject or object of any boundary treaty pending a legal or political solution because both Namibia and Botswana may lack sovereignty or territorial rights over the strip and/or its vicinity.

The Complainant further submits that the submissions in this Communication contend that Caprivi Strip is not legally part of Namibia (formerly German South West Africa). This Communication challenges Namibia's territorial rights or title over the Caprivi Strip, and it is one of the fundamental aspects of the Communication, in addition to seeking redress for the human rights violations suffered by the Victims.

Your Excellency, the Complainant has requested the Commission to invoke Rule 98 of its Rules of Procedure and issue Provisional Measures to prevent irreparable harm being done to the Complainant and the represented Victims.

Your Excellency, if the above allegations are correct, the Republic of Namibia would be failing to comply with a number of rights guaranteed under the **African Charter**, which the country ratified on 30 July 1992. Some of the violated rights may include Article 2 on freedom from discrimination, including on political status or any other opinion; Article 3 on equality before the law; Article 4 on the right to life and integrity of the person; Article 5 on the prohibition of torture, cruel, inhuman or degrading treatment or punishment; Article 6 on the right to liberty, security and protection from arbitrary arrest or detention; Article 7 on the right to have one's cause heard; Article 9 on freedom of expression and access to information; Article 10 on freedom of association; Article 11 on freedom of assembly; Article 13 on the right to participate freely in government; and Article 19 on the right to equality of all peoples.

It would also constitute a violation of other regional and international human rights instruments to which the Republic of Namibia is a party, including the **International Covenant on Civil and Political Rights (ICCPR)**, the **Convention against Torture (CAT)**, as well as other laws and standards.

In view of the above, the Commission respectfully requests Your Excellency to intervene in the matter and ensure that the Government of the Republic of Namibia:

- Provides clarification to the Commission regarding the alleged violations, and refrains from committing acts of harassment, intimidation, enforced disappearance, torture and ill-treatment, arbitrary detention, arbitrary restriction on the right to freedom of association and assembly;

- Fully investigates, or in the alternative, allows international/regional human rights mechanisms unimpeded access to the affected areas in order to carry out prompt and impartial investigations into the above-stated allegations, without any delay, so that these reports can be verified;
- Ensures that those responsible for the above-stated alleged violations are held accountable in accordance with the relevant international and regional standards;
- Refrains from taking measures which may have the effect of predisposing matters which are at the core of this Communication before its conclusion, including signing the boundary treaty with the Republic of Botswana which would involve demarcating the southern boundary line of Caprivi Strip; and
- Generally complies with the letter and spirit of the African Charter, ICCPR and CAT, as well as other relevant human rights instruments to which the Republic of Namibia is a party.

Your Excellency, I would like to indicate that the grant of Provisional Measures does not in any way affect the decision of the Commission on the Communication.

Considering the commitment of the Republic of Namibia to the cause of human rights, including through its ratification of the African Charter, ICCPR and CAT, I have no doubt that the present request for Provisional Measures will be followed by a positive response.

The Commission kindly requests the Respondent State to report back on the implementation of the Provisional Measures granted, within fifteen (15) days of receipt of this letter, in accordance with Rule 98 (4) of its Rules of Procedure.

I would like to inform Your Excellency that as part of my responsibility, I am required to report to each Ordinary Session of the Commission on the actions that I have taken in my capacity as the Chairperson and as a Member of the Commission. In that regard, the contents of this letter as well as any response received from Your Excellency will be included in my report to the next Ordinary Session of the Commission, as well as in the next Activity Report of the Commission to the African Union policy organs.

Please accept, Your Excellency, the assurances of my highest consideration.



Commissioner PANSY TLAKULA

Chairperson of the African Commission on Human and Peoples' Rights