



HAPPY NEW YEAR—2017

31 December 2016

Caprivi Concerned Group

2016 Annual Report

CCG PETITION AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS

Caprivi Concerned Group (CCG) petitioned the African Commission on Human and Peoples Rights (AfriCHPR), Africa's highest human rights body which is also a quasi-judicial arm of the African Union in November 2015.

The Commission acknowledged receipt of our petition and was seized of it in February 2016 on the basis that the petition met all requirements under Rule 93(2) of its Rules and Procedures, and "it reveals a prima facie" violation of the African Charter. Prima facie violation is a legal position or status which technically shifts the burden of proof to the respondent to demonstrate and prove her innocence, that the Charter was not violated.

Following the seizure decision adopted by the Commission during its Extra-Ordinary Session of 16-25 February 2016 in Banjul (Gambia), CCG was requested to present evidence and arguments on admissibility within two months in accordance with Rule 105(1) of its Rules of Procedure. CCG submitted its evidence within a month, in March 2016.

According to the Commission's Rules of Procedure, after the Complainant have submitted evi-



dence and arguments on admissibility, the submission will be transmitted to the Respondent, and is also requested to submit her evidence and arguments on admissibility with two months. Normally, this is evidence and arguments why the respondent would want the petition to be inadmissible before the Commission.

However, as it was reported by Namibia's Attorney General, Mr. Sacky Shanghala in the Namibian parliament in September 2016 that Namibia requested an extension of time to submit its evidence and arguments on admissibility, Namibia failed to submit its evidence and arguments in this regard in two months (from May) and only transmitted such submission to the Commission on November 29, 2016.

On December 26, 2016, the commission requested CCG to submit its observations or comments on Namibia's submissions on admissibility within a month.

CCG's prayers to the ACHPR are that the Commission:

1. Acknowledge that Caprivians constitute a "people" in international law, and that Caprivi Strip is legally not an integral part of the territory of Namibia which was German South West Africa colony, and was/is therefore forcefully annexed or colonized by Namibia.
2. Acknowledge that Caprivians' human rights have been grossly violated, and that their right to self determination have been denied by Government of Namibia through oppression, suppression or aggression.
3. Orders the respondent to exhume the remains of Caprivians buried in mass graves by the

respondent or her agents, so that the remains can be offered decent burials by family members.



Mr. Phil ya Nangoloh (left) holding a photo of Mr. Shadrick Chainda, and Mr. Steven Mvula (right) holding a photo of Hansmeyer Tungulu. The two men on the photos are just two of the seven who were executed and buried in a mass grave by Evans Simasiku and other Namibian law-enforcement officials in Katima Mulilo.

4. Orders the respondent to enter into dialogue with Caprivian nationalist organization(s) to discuss the formula through which Caprivians will be formally accorded their right to self determination under the auspices of AU and UN.

FOLLOW UP OF CCG PETITION AT SADC

On two occasions in 2016 alone, CCG made follow ups of the SADC petition of May 2014 which implored the Southern African governmental block to intervene in the political dispute between Caprivians and government of Namibia.

It is regrettable to report that after two consecutive years since the submission, there is no tangible response or progress from SADC.

Though we were informed in 2014 that the matter was with the Legal Affairs Unit of the SADC Secretariat, and was to be referred to the Ministerial Committee of the Organ for security, Defense and Politics of SADC, the latest responses are not pleasing - to be mild!

The response in the first follow up in April 2016, CCG was urged to rather seek a face to face audience with the Executive Secretary of SADC Secretariat, Dr. Tax, herself. The impression was that our petition got stuck somewhere in the organizational bureaucratic corrosion



Cde. Aldrin Mahulilo and Cde. Event Linyando, in Gaborone at SADC Offices

resulting from conflict of interest.

Attempts to meet the Executive Secretary in November failed, as we were redirected to seek an appointment with the Chairperson of the Organ on Security, defense and Politics during the 2nd follow-up in November 2016.

THE RIGHT TO SELF DETERMINATION - *What are the requirements to invoke it?*

The right to self-determination is often defined as a collective right of people to freely determine their political status, and freely pursue their social, economic or cultural development. This is so defined in Article I of the UN Charter.

Being enshrined in the UN Charter and other international law authorities makes this collective right a law. There are classes of international laws, and the right to self determination falls within the highest class which is referred to as norms of *jus cogens*. *Jus cogens* norms are rules or laws which must be obeyed or observed at all times without fail. In other words, there is no justification or exception for denying this right to any people.

After reading a presentation to the First International Conference on the Right to Self Determination by Karen Parker, (2000), titled "Understanding Self Determination: The Basics", I can summarize what I found to be the "requirements" to invoke the right to self determinations as follows:

- a) a history of independence or self rule, where people of a particular territory were in the past fully or semi autonomous under own government.
- b) an identifiable territory, which is a territory preferably well demarcated naturally or by international boundaries defined through a treaty.
- c) a distinct culture, which is basically identified as distinct through languages, customs or religion that are peculiar to this particular people.
- d) imperfect de-colonization, where by there is an absence of restoration of full governance to people having the right to self determination. For a example, when a colonizer conquer and amalgamate two separate territory, and this status quo remains or continues at independence - the formerly separate territories



Edwin Samati, CCG-SG

are not restored to their pre-colonial separate-ness.

e) a will to self governance, which is primarily an expressed desire to be independent or semi-autonomous by the concerned people,

e) capability for self governance, which relates to political maturity, understanding of political systems, availability of human and natural or economic resources.

Other sources, including decisions from the ICJ and the African commission on Human and Peoples rights, notes the following as one of the requirements or situations which may give rise to the possession or invocation of the right to self determination:

- a) legitimate claim to specific territory, b) extensive or pervasive human rights violations to a specific people by a larger state, c) oppression or domination, and illegal occupation, d) rejection of compromise solutions by the state where there is a declared conflict or dispute between co-existing peoples/states.

It must be understood that the right to self determination is not just a destination but a means to itself. There is no way to self determination except via self determination.

This means self determination cannot be imposed on a people, but the choice, the rights and responsibility to invoke it lies with the concerned people themselves. Whatever they decide is what should prevail, and what they don't decide should not prevail. As the saying goes, nothing about us without us!

Whether Caprivi Strip, or Caprivians, meet all requirements for self determination outlined above, is the readers conclusion!

CCG PUBLIC MEETING



Conference room fully parked, during CCG public meeting.

Caprivi Concerned Group (CCG) successfully conducted a public seminar on historical facts about Caprivi, human rights and unity, on Sunday 03 July 2016 in Katima Mulilo. The event was well attended, graced by the attendance of senior citizens and women.

In his keynote presentation, the Secretary General of CCG, Mr. Edwin Samati explained how and why the German-Portuguese declaration of 1886 and the Anglo-German treaty of 1890 did not incorporate Caprivi Strip to German South West Africa (GSWA), and how the Namibian Constitution or laws fall short of jurisdiction in Caprivi Strip.

According to Samati, if the 1886 declaration meant Caprivi Strip was part of GSWA, it wouldn't be necessary for the same GSWA to seek authority from Britain to use or access the same territory (strip) four years later in 1890. He further explained that the 1890 treaty was not intended to incorporate or cede the Strip to SWA as implied by the Governor, but to have access to Zambezi River or have the strip as a sphere of influence and corridor to travel to Tanganyika, not a colony.

In an effort to demonstrate that Namibia had and has no jurisdiction over the Caprivi Strip, Samati relied on the Britain's Order in Council of 1891 which had jurisdiction in Caprivi Strip; the Court Decision of 1908 which stated that German had no jurisdiction in Caprivi Strip; and Proclamation 147 of 1939 which states that laws of SWA would not apply in Caprivi Strip unless declared so to apply, especially because the later is not yet repealed or is still in force today.

Referring to the Kasikili/Sedudu decision by the International Court of Justice of 1999 where the 1890 treaty failed to save Namibia; and the claim by Mr. T Tsheko in the Bechuanaland Protectorate Legislative Council that the strip belongs to Bechuanaland who was supported by then future President of Botswana Dr. Quett Masire relying on historical and cultural

facts, Samati argued that Botswana stands a better chance to claim sovereignty over the strip than Namibia.

However, he emphasized that CCG is not a secessionist movement or a political party, but a civil rights movement which aims to see a lasting peaceful solution over the Caprivi political dispute through dialogue between Government and the UDP leadership or a referendum.

The public meeting and arguments in the keynote presentation was in response to claims made by Government of Namibia in a Joint Press Statement issued by the Caprivi Regional Governor published on 27 June 2016 in New Era Newspaper, that the 1886 declaration and the 1890 treaty are the key legal instruments which demonstrate that Caprivi Strip is part of Namibia (formerly SWA). In this statement, Government also claimed that CCG is involved in secessionist activities and its leaders should therefore be dealt with. The



CCG leaders, the torch bearers! From left: Cde. Linyando, Cde. Lutambo, & Cde. Mahulilo

Governor, Hon. Lawrence Sampofu also called on the public to "report secessionist activities" of this group so that "the law can take its course."

The Secretary General of CCG used the event to comment on tribalism and stated that Caprivi Concerned Group as a civil rights organization does not see tribes

in individuals and can never promote or condone tribalism. “A human rights activist can never be a tribalist because he sees all human beings as equal beings no matter what tribe or race they belong to” he said.

He called for unity among Caprivians, and accused SWAPO of causing and promoting tribalism not only because well-known tribalists are SWAPO members but also because the party or its government is failing to take action against its tribalistic members. “We believe that SWAPO has something to benefit from tribal divisions among Caprivians... As one cannot expect a vector to cure malaria, SWAPO as the causer can never solve the issue of tribalism. Only Caprivians themselves can resolve the issue of tribalism because they understand each other much better in the absence of a third person” he stressed.

He called on Caprivians to be actively involved in denouncing issues which directly or indirectly affect them such as tribalism, oppression and continued incarceration of Caprivians. “We have suffered a lot under this government, our family members are in refugee camps, prison or mass graves but we seem to be fine about it! God helps those who help themselves, we are the voices of those people and we are free to speak for them – it is our right”.

Given an opportunity to comment or ask questions, some members expressed appreciation of the presentation and the efforts of CCG in general. “I am very happy to see this number of people attending, and I feel what was presented here today have armed us. I call upon fellow Caprivians present here to be strong and share what they learnt here with us others who remained at home”, one attendant said.

One of those who couldn't hide his happiness is a former Caprivi political prisoner, Mr. Joseph Kamwi who motivated those present by telling them how he was tortured, transported from Katima Mulilo to Grootfontein naked, and spending 16 years in prison “but you can see me, here I am, I am still alive...” He also informed the audience that Government of Namibia have given him and others notices of appeal, “we are still hunted and whenever you will hear that I am arrested, disappeared or killed it is because of the Caprivi issue. I still believe that Caprivi is not part of Namibia because we have evidence of that”, he said.

Some attendants suggested that CCG should change the name to “Caprivi Human Rights Group”.

Kangongo's Disappearance



On 29 April 2016, the whereabouts of Cde. Retief Kangongo, the Deputy Chairperson of CCG went missing following threats by the Inspector General of Namibian Police.

In a Namibian daily newspaper, New Era, Nampol Chief, Sabastian Ndeitunga reportedly said CCG leaders would face the same fate as those who are in prison.

This was not the first time that he publicly issued similar threat. In 2012 he denied CCG the right to peacefully protest and charged that CCG and its protest were “pro-secessionist” and can be construed as treason(ous)!

In 2013, he was reported saying he is working with then Attorney General to find out why CCG leaders “should not be arrested”. This implies that he had reasons to arrest CCG leaders but wanted a legal advice on why not to arrest them!

This is the same Police Chief who admitted that Caprivi treason suspects were tortured, and when he says that CCG leaders would face the same fate as those treason suspects it literally means they would be tortured too.

These and other threats from some government officials were the primary reasons why we thought, and we still think, Nampol might have caused the disappearance of Comrade Kangongo.

Up to date, CCG is not aware of Kangongo's whereabouts and status wherever he is!

Recently, in July 2016, Ndeitunga banned CCG public meetings and called on Police in other countries to arrest CCG leaders and bring them to him “as Christmas box” to deal with them.

Public Meetings on Botswana-Namibia boundary treaty

Following a report on state-owned public broadcaster, NBC television that Namibia and Botswana would sign a boundary treaty establishing a boundary between Botswana and Caprivi Strip, CCG notified Police of its intention to meet specific communities to get their views on the matter, and to explain the legal implications of such a treaty.

After notifying Police the intended meetings, the Inspector General of Nampol, Sabastian Ndeitunga warned the public against attending CCG meetings and said CCG should not be allowed to use public facilities or spaces for public meetings.

However, CCG met many people in some communities and discussed the boundary issue in depth with them despite the threats and intimidations from the Namibian Police and the Regional Governor. We even met all four traditional authorities who were surprised to hear about the so called boundary because they were not consulted.

We explained to them that the current status of Caprivi Strip suggests that it is primarily part of Botswana because there is no definite boundary between Botswana and Namibia. Hence, Botswana took Kasikili Island and is now claiming Situngu Island.

Namibia is aware of this status which implies that Namibia does not have sovereign rights over Caprivi. Hence, Namibia initiated a boundary treaty between itself and Botswana to determine, delimit or demarcate Caprivi's southern boundary, a treaty which would consequently confer territorial right of the land north of the envisaged boundary line to Namibia.

We also explained that since Botswana is adamant that it has sovereign rights over Situngu Island, Namibia is likely to give Situngu to Botswana as a compromise through the same treaty.

Before we could meet all scheduled communities, on



Tuesday 26 July 2016, the Namibian Police Regional Commander in Zambezi region, Commissioner Boniface Mukendwa, invited Caprivi Concerned Group (CCG) leaders to meet him at his office. The meeting took place in the Boardroom where he was with two Namibian CID officers and one Inspector of the Reserve (or Special Field) Force. The meeting took two hours, from 16h12 to 18h16.

After introducing the Officers he was with, we requested the Reg. Commander to give us a copy of the minutes of the meeting at the end, and he agreed to that.

The regional commander stated that the purpose of the meeting was to find out or for his colleagues to understand how CCG operates, whether CCG is a) a political party, b) a youth or military wing of a particular political party, c) a human rights organization, d) whether it supports "secession, and e) whether it is registered.

CCG leaders unequivocally stated that CCG is not a political party; neither a military nor youth wing of any political party, but that it is a civil rights organization or a peaceful pressure group.

Finally, the Commander ordered that CCG should stop conducting public meetings which were scheduled for 21 July to August 08 2016, and stated that CCG should never and never again submit a notification of public meetings to his office but rather send such notifications to the "national leadership" or politicians at national level in Windhoek.

To our surprise, when we went back to collect the minutes we were given frustrating excuses on five different days of inquiry; and we were finally told by the regional commander on Wednesday, 10 August 2016, that he will not give us the minutes.

The regional commander acted untruthfully, unfaithfully, unfairly, and unprofessionally! We also believe that the absence of, or failing to provide us with a copy of minutes confirm that we were not only unlawfully interrogated, deceived to speak without informing us our right to remain silent, but also arbitrary detained for that two hours.

REQUEST FOR PROVISIONAL MEASURES FROM ACHPR

In August 2016, CCG requested the African Commission on Human and Peoples Rights (ACHPR) to invoke provisional measures to ensure protection of CCG leaders and supporters' human rights.

It is through this request that the Commission was requested to advise Government of Namibia to respect human rights, not to do anything that would cause harm to CCG leaders, and not to continue with the envisaged boundary treaty which would undermine or interfere with the core aspect of the submission before the commission regarding Caprivi Strip as a disputed territory.

This request, the provisional measures, was granted and the Chairperson of the Commission, Madam Pansy Tlakula wrote a letter addressed to the President of Namibia, in which Namibia was ordered to:

- ◆ Provide 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 demar-



Adv. Faith Pansy Tlakula (Ms)
Chairperson of the AfriCHPR

cating 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.

However, it appears, in the Attorney General's Parliamentary address that Government denied all allegations and opted to alternatively invite any international or regional human rights body to come and investigate, without first investigating the allegations.

It also appears that Namibia failed to respond within 15 days which was given by the Chairperson of the Commission. However, the status of the provisional measures or GRN's response in this regard remains unknown to CCG until such time when the Commission will brief us!

What we know is that the intimidations, restrictions on the freedom and right to assemble peaceably without arms, and other violations indicated in our request for provisional measures, and fear for our lives remains as before the provisional measures were invoked.

CONCLUDING OBSERVATIONS BY UN COMMITTEE AGAINST TORTURE ON CAPRIVI

An international committee against torture reprimanded the Namibian government on what it describes as a lackadaisical attitude towards human rights.

The committee against torture recommended that Namibia urgently take steps... to investigate allegations of torture and inhumane treatment during the liberation struggle and the Caprivi uprising.

Although Namibia submitted its second report with a 16-year delay, the committee in November welcomed the country's efforts to submit it, and praised Namibia's commitment to ratifying a host of international instruments including the convention's anti-torture requirements.

Nevertheless, following a two-day dialogue in November based on reports submitted by government and human rights organisations, particularly Namibia's leading human rights organisation - NamRights, several gaps were identified in Namibia's obligations under the convention.

A major point of concern is the lack of legislation that defines torture and protects citizens and others from such acts, the committee found. Hence, the committee recommended that Namibia "should expedite the adoption the Prevention and Combating of Torture Bill, ensuring that the definitive adopted version of the law includes the definition of torture in accordance with the provisions of the Convention, and that the acts of cruel, inhuman or degrading treatment are fully considered in the law."

The Committee was also concerned with possible war crimes committed by SWAPO committed during the liberation struggle of Namibia, and serious allegations of torture committed by Namibia against Caprivians in 1999 which have not been investigated.

During the discussions in Geneva in November, Namibia's Justice Minister Albert Kawana, a Caprivian, admitted before the CAT committee that "torture was committed" against suspected Caprivi "secessionists".

The committee, henceforth, concluded that although the state of emergency provided for statutes of limita-



Hon. Geoffrey Mwilima, who is still in prison despite being severely tortured!

tions for "serious crimes such as torture", government should "ensure that all allegations of acts of torture and ill-treatment are investigated, prosecuted and punished, including those committed during the liberation struggle and the state of emergency of August 1999."

The committee further recommended that Namibia should that "all allegations of torture perpetrated by law-enforcement officials are investigated, prosecuted and punished." This is where the likes of Mr. Evans Simasiku, Popyanawa, and others are likely to be held accountable for the torture and killings of Caprivians in 1999.

The report or the Committee also notes a concern "of the excessively slow functioning of the judiciary and that pre-trial detention remains unacceptably lengthy, which is harmful for the detainees." Hence, the Committee recommended that Namibia should expedite the modernisation and the reform of its justice system and take measures to reduce the duration of pre-trial detention by considering recruiting additional judges.

Namibia was requested to provide follow-up information on the recommendations by December 2017, especially on the adoption of a prevention and combating of torture act, and on conditions of detention and the country's stance to protect refugees from being sent back to countries where they risk torture.

Namibia was further requested to disseminate the committee's concluding observations widely through official website, media, and NGOs.



Martyr Oscar Lupalezwi, who was also severely tortured, detained and he died in prison!