

# Namibia: Global governance matters

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Direct United Nations (UN) responsibility and intervention was an important factor for a solution of the dispute concerning the future of Namibia in 1989/1990. The transition to independence negotiated and implemented for Namibia under the initiative of the UN was a process of controlled change, which finally resulted in changed control. It remains a matter of speculation which course Namibia's decolonisation would have taken without the international organisation's facilitation. The fact of the matter is that Namibia, more than most other sovereign states, has been a result of an active role taken by the UN. Hence, it is an interesting question what role Namibia plays as an international actor with regard to normative frameworks and the values and principles relating to global governance.

This chapter recalls, in a first part, the role played by the UN in the process towards achieving national sovereignty. It then analyses Namibia's subsequent role as an independent member state of the UN with regard to a few aspects of its foreign policy relating to the respect for global normative frameworks guiding the notion of good governance. A third and final part offers some concluding thoughts.

## A trust betrayed

Most parts of the territory of the Republic of Namibia were declared a Protectorate of imperial Germany in 1884. What was then known as *German South West Africa* lasted for 30 years. During this period, it was transformed into a settler-dominated society under foreign rule characterised by strict racial segregation. The structures imposed within a violent subjugation process of the local population had lasting effects far beyond the actual period of German rule. After World War I, the former German colony was declared a "C" mandate, with far-reaching authority transferred on the mandatory power. The trusteeship was executed on behalf of the British Crown by the Union of South Africa. With the end of the League of Nations – originally in charge of supervising such trusteeships – and the subsequent establishment of the UN and its Trusteeship Council, a long-lasting dispute emerged between the world body and one of its founding members, South Africa. The

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future of the country, including the administrative and legal responsibilities and its status in terms of international law and self-determination, became one of the most prominent and genuine cases of internationally negotiated decolonisation for most of the second half of the 20th Century.

The “winds of change”<sup>1</sup> brought about the decolonisation of most African countries until the late 1960s. This contributed towards a diversified composition of the family of sovereign states within the UN, which in turn had an impact on the discourse in the international policy arena. The emergence of independent African states and both the establishment of an Organisation of African Unity as well as a Non-aligned Movement contributed markedly towards shifts in policy issues. These included the change of perception of unsolved decolonisation conflicts like the case of Namibia. The 1960s, therefore, brought to an end the silent tolerance of a continued occupation of the territory by neighbouring South Africa in defiance of the authority and responsibility claimed by the UN.

The dispute turned into open conflict and demanded recognition – also in terms of international law.<sup>2</sup> In both the General Assembly as well as the Security Council, the UN assumed full responsibility to remain seized with the matter for more than two decades to come. Namibia turned into a genuine and singular case of UN concern, manifested also by the creation of the UN Council for Namibia<sup>3</sup> and the UN Institute for Namibia (UNIN).<sup>4</sup> The liberation movement – in a process of formation during the 1950s and established since 1960 as the South West Africa People’s Organisation (SWAPO)<sup>5</sup> – subsequently achieved unique status. With the overwhelming support of the non-aligned countries and the Eastern bloc, as a result of intensive diplomacy Namibia was acknowledged by the General Assembly as the only legitimate agency of the Namibian people<sup>6</sup> and obtained

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- 1 This catchword, characterising the rapid processes of decolonization in many African countries was coined in a speech by then British Prime Minister Harold Macmillan on 3 February 1960 whilst addressing the South African Parliament in Cape Town during his tour of African Commonwealth states. He then said: “The wind of change is blowing through this continent. Whether we like it or not, this growth of national consciousness is a political fact”. The most popular song by the late Jackson Kaujeua (1953–2010) had the same title.
  - 2 With Resolution 2145, the UN General Assembly terminated South Africa’s mandate over South West Africa on 27 October 1966 and subsequently qualified its continued presence as illegal occupation.
  - 3 Subsequent to Resolution 2145(XXI), on 19 May 1967 the General Assembly resolved to create an entity representing the interests of the Namibian people within the UN agencies.
  - 4 Its Director, who was employed as a highly ranked UN international civil servant, was Namibia’s first Prime Minister, Hage G Geingob. Other prominent exiled Namibians serving at UNIN included the late Mosé Tjitendero, who later served as the Speaker of Namibia’s Parliament.
  - 5 Today the ruling party; later known as *SWAPO of Namibia* and currently as *SWAPO Party of Namibia*.
  - 6 UN General Assembly Resolution 3111 of 12 December 1973 recognised SWAPO as “the authentic representative of the Namibian people”. This was amended in UN General Assembly

formal observer status to the UN bodies.<sup>7</sup> Notwithstanding this considerable diplomatic success, however, the polarised situation of superpower rivalry prolonged the transition process to Namibian independence despite several far-reaching UN Resolutions and diplomatic initiatives until the late 1980s, when UN Security Council Resolution 435 of 1978 was finally implemented – more than a decade after its adoption.<sup>8</sup>

## The UN as a multi-level broker

Until Namibia's independence, the UN played a crucial if not decisive role, culminating in the establishment of the United Nations Transition Assistance Group (UNTAG). UNTAG had supervisory powers in respect of Namibia's transition to an internationally accepted sovereign state under UN Security Council Resolution 435.<sup>9</sup> Hence, the UN system can be considered by all standards as a midwife to the Republic of Namibia, proclaimed on 21 March 1990.

These agencies, however, were in themselves by no means a sign of homogeneity or uniformity. UN positions and policies on Namibia were represented in different ways, be it through the most radical support to SWAPO as expressed in the General Assembly Resolutions, the role assumed by the UN Council for Namibia as an institution acting on behalf of a generally assumed Namibian interest otherwise not represented, or in the far more controversial (non-)decisions taken by the Security Council (and, in particular, the role of its permanent Western member states, who initially all too often blocked any progress by using their veto rights). The Western Contact Group (WCG) emerged during 1977 to overcome a stalemate in terms of geo-strategic interests in general and with regard to southern Africa and Namibia in particular, as an attempt to prevent further isolation of the Western Security Council members over controversial issues related to the South African apartheid regime.<sup>10</sup> At the same time, the WCG's institutionalisation

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Resolution 31/146 of 20 December 1976 to “sole and authentic”, endorsing an exclusive status and political monopoly of SWAPO in the negotiations on behalf of the Namibian population.

7 The long-standing SWAPO representative to the UN was the country's first Foreign Minister, later Prime Minister and Speaker of the National Assembly, Theo-Ben Gurirab.

8 A wide range of literature has been produced on the Namibian case, much of it characterised by a preference to one of the parties involved in the conflict and reflecting the bias of the Cold-War period. Informative, though not necessarily non-partisan, overviews on the different aspects of the complex issue and the variety of political interests at work are offered by Dore (1985); Dreyer (1994); Du Pisani (1986:272–460); Kaela (1996); Melber & Saunders (2007:73–94); Nyangoni (1985:40–93); Rocha (1984); Singham & Hune (1986); UNIN (1987), as well as numerous UN publications. Many of the above sources offer access to the full text of the relevant UN documents.

9 For details on the last stages to Namibian independence, see in particular Cliffe et al. (1994); Hearn (1999); Herbstein & Evenson (1989); Lush (1993); M'Passou (1990); Thornberry (2004); Weiland & Braham (1994).

10 The WCG (also dubbed *The Gang of Five*) was composed of the then five Western member countries of the Security Council: Canada, the Federal Republic of Germany, France, the

was a visible indication of the existing differences on how to approach a lasting and acceptable solution to the Namibia problem. With intensive shuttle diplomacy, including proximity talks in decisive stages, the initiative tried to negotiate a compromise between the direct opponents – SWAPO and South Africa. The immediate result was reflected in Security Council Resolution 435 (1978). But the blueprint was followed by further negotiations on details as well as on more substantive issues. Consequently, this initiative failed to achieve implementation for years to come.

The subsequent policies through most of the 1980s were a reflection of continued negotiated compromise between the different power blocs and their global policy interests, while the battle over the occupied territory of Namibia continued politically, diplomatically and militarily. Hence, it would be erroneous to assume that there has been one binding UN position on the Namibia conflict ever since the issue emerged. Instead, the UN created the forum to negotiate the decolonisation process and to ultimately secure its implementation. This process lasted more than a quarter of a century and finally brought to end more than a hundred years of foreign occupation of the territory. In its course, it was accompanied by the articulation of different and, at times, conflicting political approaches from several social forces operating in a local Namibian, a regional southern African, and a wider global context.

In the light of this complexity, the UN was more of a conflict mediator and power broker seeking to reconcile the various interests operating also within its own structures. The overall goal of most if not all parties might have been to correct the existing anachronism of a trust betrayed towards the end of a century, which, since the 1950s, had witnessed the era of successive formal independence for the African colonies. But the views on how to achieve this goal for Namibia differed considerably at times. With Namibian sovereignty in 1990 and – more or less as a direct result thereof – the subsequent democratic elections in South Africa during 1994, the era of European colonialism on the African continent was brought to an end.

SWAPO's armed liberation struggle, launched in the mid-1960s, as well as the Cuban engagement with the South African military in southern Angola, had a major impact on the further course of decolonisation. But Namibian independence was also the achievement of an international community, which after the Cold-War period managed to end lengthy and complicated diplomatic negotiations first and foremost dominated by the strategic interests of the two power blocs. The internationally negotiated settlement ultimately resulted in a transition towards independence with a decisive degree of UN involvement based on the – albeit delayed – implementation of Resolution 435 (1978). It paved the way for a legitimate government led by the previous liberation movement, SWAPO.

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United Kingdom and the United States. Interesting accounts on the initiative are offered by Jabri (1990) and Vergau (2006).

The goal of the struggle was political independence in a sovereign state under a government representing the majority of the previously colonised people so far excluded from full participation in society. The power of definition concerning the future post-colonial system was exercised during this process, mainly by the national liberation movement. It voiced 'the will of the people' in interaction with the international players. The struggle included exile politics and international diplomacy as relevant components. Dobell proposes that –<sup>11</sup>

Namibia provides a particularly fascinating case study of the gradual dismantling of a century of colonial rule, and its ultimate replacement – through democratic means, and monitored by external powers – by a movement which, some would argue, had in certain respects come to resemble the forces against which it had originally struggled.

UNTAG was finally established to overlook and implement the transition to independence between April 1989 and March 1990. It had to maintain a precarious balance throughout, in order to underline the claim of being a neutral facilitator during the implementation process. The figures presented by UNTAG at the end of its involvement displayed a massive investment into maintaining relative stability and an environment conducive to basically free and fair elections. During the period in question, there were an average of 6,700 members of UNTAG in Namibia from a total of 109 countries: 4,300 of them were in the military component; 1,500 were police monitors; and 900 formed the civilian component. During the actual week of elections, 7–11 November 1989, the UNTAG presence peaked at 7,900 members. The total cost of the UNTAG operations amounted to some US\$373.4 million. UNTAG had established 42 district centres and 48 police stations, with the number of UNTAG bases (including military posts) totalling almost 200. Over 43,000 Namibians were repatriated prior to the elections from 40 different countries by the United Nations High Commissioner for Refugees, and 56 laws categorised as discriminatory were abolished. As part of its voter education campaign, UNTAG produced and broadcast 32 television and 201 radio programmes, the latter in 13 different local languages. More than 600,000 T-shirts, buttons, stickers, information brochures and posters were distributed as well.<sup>12</sup>

Even a more critical approach to the UNTAG enterprise has to register an ultimately at least satisfactory if not happy end (considering the further costs of human life during the UNTAG supervision), and to correct many of the originally more pessimistic doubts as to the possibilities of a success. This conclusion is mainly drawn under the given circumstances of judging UNTAG as a peacemaking or, rather, peacekeeping mission

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11 Dobell (1998:23).

12 UNTAG itself offered a comprehensive and colourful pictorial display of its wide range of activities during the period, with many illustrated details (cf. UN 1990). It is important to note in this context that UNTAG did not undertake an election campaign: this was left to the parties competing for votes. Instead, UNTAG concentrated on providing the necessary information about the process, its own role, and the elections to come.

in the first place: it supervised adherence to agreed democratic principles to ensure an acceptable result of the decision-making process on the political future of Namibia by the majority of the Namibian people. Seen in this context, UNTAG received praise mainly with regard to its efficient role as a peacekeeping force, thereby creating an enabling environment for relatively free and fair general elections. To this extent, the Namibian case and experience contributed positively to redefining the UN's potential role as a global agency and institution enforcing rules applicable to humanity as a whole.<sup>13</sup>

Among the many highest-ranking guests of honour witnessing the hoisting of the Namibian flag during the first minutes of 21 March 1990 was the then UN Secretary-General Javier Perez de Cuellar. He also held the opening speech at the beginning of the Independence ceremony, and was the first UN Secretary-General ever to swear in an incoming Head of State: President Sam Nujoma took the oath of office from the highest international civil servant. This was a final symbolic act underlining the crucial role of the international organisation in bringing about national sovereignty to the Namibian people. Not surprisingly, joining the UN as a member state was among the first foreign policy initiatives implemented by the new Namibian Government executing political power.<sup>14</sup>

## Namibia, global governance and normative frameworks

This close historical bond between Namibia and the UN, as one of the most important among several midwives giving birth to the legitimate sovereign state, suggests that the country's foreign policy is guided by respect for the role that the international community can play in bringing about a negotiated solution to conflicts. This would embrace that the Namibian reference points for governance both at home and abroad are firmly rooted in and linked to the normative frameworks adopted by the UN since its establishment after World War II. Indeed, Namibia is a signatory to most international conventions and agreements. Thereby, it indicates its commitment to uphold the values and principles considered as substantial ingredients for good governance. These include domestic policies in respect of the rule of law and human rights as well as contributing to peace and security internationally through bi- and multilateral relations practising and supporting the same values. President Hifikepunye Pohamba reassured the august gathering of world leaders at the opening plenary of the 67th UN General Assembly on 24 September 2012, at which the Declaration on the Rule of Law at the National and

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13 Johansen (1990).

14 With Resolution 652 (1990), the UN Security Council unanimously recommended on 17 April 1990 to submit the membership application to the General Assembly, which admitted the Republic of Namibia as its 160th member state on 23 April 1990 by way of Resolution S-18/1. The UN Council for Namibia subsequently and logically so decided its own dissolution on 11 September 1990.

International Levels<sup>15</sup> was adopted, that –<sup>16</sup>

... his country was founded upon the principles of democracy, the rule of law and justice for all. It had a Bill of Rights and had acceded to the international treaties and conventions related to those principles.

Given the process of decolonisation as summarised above, with the particularly close engagement of the international community in bringing about its independence, and the wide appraisal of its being the UN's ultimate success story,<sup>17</sup> Namibia was initially able to punch above its weight in the international arena. For example, that representatives of 147 countries were in attendance at Namibia's Independence ceremony speaks to the worldwide prominence of the event. It is also not surprising, therefore, that, during its first decade as an independent state, Namibia was able to play a more significant role than one would expect in relation to its actual relevance (i.e. irrelevance) in terms of the international power relations.

In 1998, Namibia's Foreign Minister Theo-Ben Gurirab was elected as Chairperson for the UN General Assembly's 54th Session 1999/2000, and Namibia was elected as a non-permanent member of the Security Council for 1999 and 2000. The Millennium Summit of the Heads of State and Government at the UN from 6 to 8 September 2000 was jointly chaired by the respective Namibian and Finnish Presidents, Sam Nujoma and Tarja Halonen.

Between 2006 and 2010, Namibia also played a visible role in UN deliberations, mainly as a result of our proactive ambassador who managed to achieve a high profile and visibility in the organisation's headquarters in New York. Kaire Mbuende, first a Deputy Minister for Agriculture, Water and Rural Development, and then a less fortunate SADC Executive Secretary<sup>18</sup> and, finally, Deputy Minister of Foreign Affairs, was a near ubiquitous Permanent Representative to the UN who participated in several initiatives on behalf of his country and thereby managed to gain much respect for Namibia.<sup>19</sup>

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15 Document A/67/L.1. It "reaffirmed that human rights, the rule of law and democracy were interlinked and mutually reinforcing, and that they belonged to the universal and indivisible core values and principles of the United Nations"; UN Department of Public Information, News and Media Division, New York, General Assembly, GA/11290, 24 September 2012; available at <http://www.un.org/News/Press/docs/2012/ga11290.doc.htm>, last accessed 16 September 2013.

16 (ibid.:19).

17 This is a rather relative conclusion, given the long battle for independence at the expense of so many lives and other sacrifices by ordinary people. A more decisive intervention at an earlier stage by the UN – provided the Western countries had been willing to support this – could have spared many lives on all sides of the conflict.

18 He resigned under pressure before ending his second term in office.

19 Mbuende's appointment as Permanent Representative to the UN by President Pohamba came as a surprise after his earlier dismissal as Deputy Foreign Minister together with Minister Hidipo Hamutenya by Pohamba's predecessor as Head of State. Mbuende was regularly accused of

## **Global policy issues in the Nujoma era**

However, Namibia's track record, in retrospect, was far from being a shining example. Rather early into its bilateral relations with other states and their leaders, a display of camaraderie with some of the less reputable autocrats became obvious and began to dent Namibia's image. The state visit by President Sam Nujoma to Nigeria's dictator Sani Abacha on 14 May 1995 raised eyebrows – also at home: in a rare initiative, people demonstrated outside the Nigerian High Commission in a failed effort to save the life of writer and activist Ken Saro Wiwa. Reportedly, Sam Nujoma, in his friendly exchanges with his Nigerian colleague, never raised the appalling violation of human rights by the Abacha regime.

Similarly embarrassing was the official state visit by Indonesian Head of State Suharto to Namibia on 18 November 1997. Already under siege at home by those who revolted against his tyranny, this was among the autocrat's last international appearances before he was toppled by his people. His reception in Namibia was one of a respected leader, while many were wondering where the judgment of the government had been in embarking on such dubious signs of friendship. Closer to home, the lasting friendship with Zimbabwe's autocrat Robert Gabriel Mugabe and the close ties with the Laurent Desiré Kabila of the Democratic Republic of the Congo (DRC) reflected a similar mindset.

At a session on 25 March 1999 during its membership in the UN Security Council, Namibia joined China and Russia in their condemnation of the North Atlantic Treaty Organisation intervention in the former Yugoslavia, and on several occasions took positions in defence of the Milosevic regime. This view, declared as solidarity with the weak on the side of justice, was also propagated in a brochure presenting SWAPO's political programme for the parliamentary elections in November 1999. The emphasis on strict non-intervention as a guiding principle for international policy and peace was, however, less convincing due to Namibia's own military intervention in the DRC, where, in late August 1998, President Nujoma ordered the army to come to the rescue of President Kabila Senior. This not only cost the lives of several soldiers of the Namibian Defence Force in an internal conflict threatening to erupt into full-scale civil war in a country not even bordering on Namibia, but it was also a controversial issue in SADC. The military support offered to the Kabila regime by Angola, Namibia and Zimbabwe was

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being among the notorious Rally for Democracy and Progress party's 'hibernators' in SWAPO. After the parliamentary election results at the end of 2009, when the local poll among Namibians voting at the UN mission in New York did not meet SWAPO's expectations, Mbuende's fate seemed to be a foregone conclusion after the SWAPO Youth League publicly demanded from the Head of State to replace him for his unpatriotic lack of delivery – as if the diplomat was supposed to ensure that the ballots had the desired results.



not approved by the other members of the SADC Security Organ, and was considered an unauthorised, unilateral initiative.<sup>20</sup>

In March 2002, President Nujoma lambasted the Commonwealth decision to suspend Zimbabwe after its presidential elections, which resulted in Mugabe's continued hold on power, provided evidence of having been fraudulent. At the end of his own three terms in office as Head of State, President Sam Nujoma had established an image of being a benevolent autocrat himself. His ties with autocrats elsewhere in the world did not help to counteract such perceptions.

### **Global policy issues under President Pohamba**

While his image was more that of a soft political leader, the foreign policy under Namibia's president Hifikepunye Pohamba did not deviate visibly from the country's earlier track record. Maybe the country – not least due to the active permanent representative at the UN in New York – engaged in general matters relating to UN structures and governance more visibly. A presidential visit to Tanzania on 27–28 May 2006 was used for statements by both heads of state to strengthen the continent's position as part of a broader UN reform. Pohamba also demanded the democratisation of the UN on his return from the AU Heads of State and Government meeting in Addis Ababa in 2006, where he had addressed local diplomats. He opposed the idea of any veto right. In his speech to the 60th Session of the General Assembly in New York on 17 September 2006, he reiterated the demands for adequate African representation and the abolition of any privileges for certain member states.

At the AU Summit in Sirte on 3 July 2009, Namibia was among those countries that endorsed the dismissal of the ICC extradition order for Sudan's President Omar al-Bashir. On his return, Foreign Minister Marco Hausiku stressed that Al-Bashir would be a welcome guest in Namibia. On 9 July 2009, the Director of the Legal Assistance Centre, as a credible local human rights agency already active under the South West African Administration, criticised this as a violation of legally binding international treaties signed by the Namibian Government, such as the Treaty of Rome, which had established the ICC. He declared that the endorsement of the AU decision suggested that Namibia could not be trusted with its international treaty obligations and was in defiance of its own Constitution:

Considering our recent history of violent oppression under Apartheid, of all nations, we are expected to side with victims of mass murder, rape, mutilation and torture; not with their tyrants and persecutors.

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20 Not that the other SADC members were not guilty of having applied double standards: South Africa, as the fiercest critic of this intervention, had at about the same time directly intervened in Lesotho without seeking any prior approval or authorisation from SADC.

In contrast to the government's dubious stance in solidarity with Al-Bashir, the country's Permanent Representative at the UN, during the UN General Assembly debate, vehemently demanded the strict implementation of the AU principle that governments that seized power by means of coups should not be recognised. He led an initiative which ruled on 25 September 2009 that the new government of Madagascar would not be admitted to participate in the 64th session of the General Assembly's high-level segment.

The situation in Libya, however, revived the struggle mentality of yesteryear, and the intervention sanctioned by the UN Security Council was criticised both by members of the Namibian Government and by leaders of the SWAPO Party of Namibia as an imperialist conspiracy for regime change. In his speech on 21 March 2011, during Namibia's 21st anniversary of its independence, President Pohamba condemned the intervention "in the strongest terms", saying, "Our brothers and sisters in Libya are under attack from foreign forces". That same week, former President Nujoma added that this was a "crime against humanity" and a violation of international law. On 11 July 2011, Minister of Justice Pendukeni Iivula-Ithana confirmed that Namibia would not comply with the ICC arrest warrants for Muammar Kadhafi and Al-Bashir. Namibia was among 22 countries that objected in the UN General Assembly on 16 September 2011 to accepting the National Transitional Council as the body officially representing Libya. On 23 September 2011, Pohamba declared in his speech at the 66th Session of the General Assembly that the intervention in Libya was reminiscent "of the infamous Berlin Conference of 1884/1885, when Africa was carved up by imperial powers".

Finally, 24–28 July 2012 saw a state visit by King Mswati III of Swaziland, accompanied by one of his 12 wives. The rare trip, which included a hunting safari with the former Head of State and some sightseeing excursions at Namibian taxpayers' cost, received much criticism.

## **Domestic policy aspects**

As stressed by the recent high-level debate in the UN and acknowledged in the speech by President Pohamba on that occasion (as quoted above), the rule of law is among the pillars of a global governance system seeking to respect and secure human rights, democracy and justice. The rule of law has both international and domestic dimensions.<sup>21</sup> Hence, Namibia's commitment to global governance norms and principles also has a domestic element which can document to which extent these guiding principles are applied in spirit and practice.

One of the most recent contentious issues in this regard was the debate about the future of the SADC Tribunal. Established on 14 August 2001 and operational as from 2005 in

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21 See Melber (2012).

Windhoek's former "Turnhalle",<sup>22</sup> it was a major step forward in securing a subregional rule of law among SADC member states. The Tribunal was, however, de facto suspended at a summit in Windhoek on 16 and 17 August 2010, when SADC celebrated its 30th anniversary and elected President Pohamba as its next Chairperson for the year to come. This decision was in response to the case of a Zimbabwean farmer who successfully resisted the eviction from his land by the Zimbabwean authorities by appealing to the SADC Tribunal. A documentary film, *Mugabe and the White African*, recording the stages of this battle in court and adding footage from the terror on the ground, received worldwide attention and critical acclaim.<sup>23</sup>

Despite the Tribunal's pronouncements, however, the Zimbabwean Government repeatedly declared its judgments as irrelevant. It considered the Tribunal's rulings not binding, claiming that not enough member states had ratified the SADC Treaty establishing the Tribunal. On 16 July 2010, the Tribunal reiterated two earlier judgments in the matter and concluded that the Zimbabwean state had violated its decisions; the Tribunal was to report its finding to the Windhoek SADC Summit for appropriate action. Instead of dealing with the Zimbabwean non-compliance with the rulings, the Summit decided that a review of the role, functions and terms of reference of the court should be undertaken within six months. The official communiqué added not a word more on the matter. This was tantamount to shelving the controversial issue after the Zimbabwean authorities had effectively been in contempt of court. However, the Summit went even further by not endorsing an anticipated second term in office for four judges, whose first terms were to expire on 31 August 2010. They included the Tribunal's President, although his presidential term was set to run until 27 November 2011. As a result, the Tribunal ceased its activities as from the end of August 2010.

Namibia's role with regard to the future of the Tribunal could be seen as indicative of the government's continuing stance with regard to upholding the rule of law in the region, especially when other SADC member states maintain strongly antagonistic positions on the matter. In preparation for the 32nd Official SADC Summit on 17 and 18 August 2012 in Maputo, the Ministers of Justice and Attorneys-General held a meeting from 11 to 15 June 2012 in Luanda to finalise their submission on the Tribunal. Reportedly, the Ministers held the view that human rights formed an integral part of their domestic judicial system. By implication, this could be interpreted as the intention to return to the

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22 Dating from the German colonial era in the centre of Windhoek, this historical building was home to the so-called Interim Government established in the 1980s as an effort to counter SWAPO's struggle for Namibia's independence. That it was chosen as the seat of the SADC Tribunal had some symbolic significance in respect of reclaiming southern African sovereignty.

23 See also Freeth (2011). Namibia's reputation in terms of its efforts to promote equality before the law was greatly enhanced by the personal role of the Namibian lawyer Elize Ndjavera Angula, who was part of the claimant's team seeking justice for their clients.

dictum of absolute national sovereignty with the aim to strip the Tribunal of its most important role.

As a result, the SADC leaders agreed at the Maputo Summit in August 2012 that a new Protocol was to be negotiated. Its remit was to be limited to interpreting disputes among member states in respect of the SADC Treaty and its Protocols. This effectively bars citizens' from having any further individual access to the Tribunal, and allows the Zimbabwean Government to get away with all sorts of violations despite the court's earlier rulings. This shelving of the Tribunal's regional function not only raised "serious concerns about the normative coherence and cohesion of SADC", but also gave one reason to worry about the lack of recognition —<sup>24</sup>

... of the primacy of people and regional citizens rather than the security of states and the interests of their ruling elites.

The official position on the SADC Tribunal held by Namibia's former Minister of Justice Pendukeni Iivula-Ithana (then also Secretary-General of the SWAPO Party of Namibia and among the contenders to succeed President Pohamba as Head of State, while holding the post of Attorney-General at the same time) is, in this respect, revealing. At an earlier meeting in Walvis Bay in 2011, she had already expressed the view that the Tribunal was in conflict with international law principles, including a number of SADC member states' constitutions. She reiterated the wish "through appropriate measures to make adjustments from time to time, to fit our interests". She felt that SADC member states were entitled to "fine-tune regional bodies" to serve them: "The instruments serve us, they are for us, and this is not a reversible position".<sup>25</sup> Such blatant misconception of the rule of law turns it again into the law of the rulers.

This unfortunate misunderstanding also seems to explain the Namibian Government's misguided handling of the failed secession attempt in the Caprivi in 1999.<sup>26</sup> For more than 12 years now, those that were originally imprisoned and accused of high treason have been waiting for a verdict. The assumption of being innocent until found guilty sounds very hollow under such circumstances, where none of the accused – even those suffering from grave health problems – were granted bail. Meanwhile, more have died

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24 Le Pere (2012:1).

25 Quoted in Sasman (2012).

26 This north-eastern strip of land was added to the territory in the early 20th Century as part of the Heligoland–Zanzibar Treaty between the British and German Governments, thereby separating parts of the Barotseland kingdom from the main centres in then Northern Rhodesia (today the Western Province of Zambia). The local Lozi-speaking population nourished desires for autonomy and self-determination. As a result of the recommendations of a Delimitation Commission, redefining the voting districts and regions for the parliamentary and presidential elections in late 2014, the region was renamed as *Zambezi*, much to the protest among some of its inhabitants.

in custody (without being found guilty) than victims on all sides during the military encounter in August 1999, which resulted in the – so far only – declaration of a state of emergency. If ‘justice delayed is justice denied’, then, indeed, the more than 100 accused behind bars for more than 12 years have fallen victim to a legal system that has failed to offer justice to them.<sup>27</sup>

The above examples of Namibia’s role with regard to the dismantling of the SADC Tribunal and its treatment of the prisoners accused of high treason and waiting for a verdict for 12 years in jail shows that the track record in terms of adherence to the fundamental values and principles of basic normative frameworks is not free of occasional flaws.

### Concluding remarks: An opportunity wasted?

Given the window that opened with the internationally negotiated and implemented transition to independence, Namibia was given every opportunity to establish a solid reputation. As one of the latecomers to a largely post-colonial world, Namibia could have set an example of best practices. Looking back, this chance has been unnecessarily squandered on a number of occasions. Often, a knee-jerk response to challenges, guided by the rhetoric (if not antics) of the anti-colonial, pseudo-revolutionary vocabulary, has dented the image of the political leadership in charge of the protection and promotion of fundamental values, rights and principles. Rubbing shoulders with old and new friends who were best known for dubious track records in terms of human rights and respect for the rule of law did nothing to enhance Namibia’s image among those concerned about equality, democracy and justice.<sup>28</sup>

Namibia remains among those states on the continent which has reason to feel relatively confident about its achievements since independence. But there is no reason for smugness or backslapping, given the often only limited, relative value of such comparisons. Instead, one should carefully question the criteria and points of reference on which such comparative judgments are based. That there are many more countries ranking lower on a democracy index or any similar list does not mean that everything is as good as it could be. There are enough depressing statistics counteracting any temptation to be triumphant or even satisfied. That states elsewhere in the world claim the moral high ground when it comes to Namibia – while they should rather take care of their own problems at home –

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27 See Melber (2009:463–481).

28 Neighbouring Botswana, for that matter, displays partly a contrasting approach: a state of similarly minimal influence internationally, it has on various occasions taken the liberty to disagree with a dubious African unity in protection of those who violate the fundamental rights of their people in the name of national sovereignty. The new head of state in Malawi seems to be on a similar avenue, and has already courageously resisted opportunism and stood her ground under difficult circumstances, thereby adding tremendously to her own and her country’s positive reputation.

is also no excuse for not trying harder. Furthermore, that the normative frameworks and guiding principles adopted by UN member states are often ignored is not an acceptable reason for why one should not loyally seek to abide by them.

Thus, the existence of Guantanamo Bay<sup>29</sup> and other places of organised state crime and violations of fundamental principles of respect for the rule of law and human rights does not mean that this adequately justifies locking people away in similar places, such as Dordabis (a rural police station south-east of the capital, Windhoek) or some other obscure locations and deny them a fair trial. Similarly, that hegemonic interests execute a power of definition which, according to the geostrategic interests that suit those powers, make commitments to fundamental values an opportunistic and hypocritical exercise at best does not mean that one should not bother to sign noble declarations without seeking to give them adequate recognition and meaning by living up to their spirit.

Namibia could have done better. Only if it vigorously pursues policies breathing life into the kind of global governance principles and values of international solidarity which brought about independence to the nation and its people will it deserve a more prominent ranking worldwide.

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29 Where, under extrajudicial conditions without legal representation or a trial, the US has indefinitely locked up persons suspected of having been involved in the September 2001 bombings of various locations in that country They have still not been tried by an international or civil domestic court.

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