

Namibia -

political-legal issues

Recent legal proceedings suggest something of a change in the attitude of Namibia's supreme court. A contributor discusses.

In 1980, Ida Jimmy, a SWAPO member in Namibia was jailed for ten years for expressing support on a public platform for SWAPO's military wing, the People's Liberation Army of Namibia (PLAN).

A couple of months ago, Angula Mwaala, a PLAN combatant, was sentenced to an effective 11 years on charges of murder and robbery with aggravating circumstances, for being an accessory to the retaliatory killing of a farmworker who had killed a SWAPO guerilla and claimed the R2 000 reward.

Justice Bethune declined to impose the death penalty, saying, 'The court will take regard of the feelings of the majority of people of this country if it does not impose the death sentence'. He found that 'Evidence in this and other cases indicates that a large percentage of terrorists entering this territory are killed by the Defence Force. If that does not have sufficient deterrent value it is unlikely that sentences imposed by this court would scare off terrorists'. Argument in mitigation had centred around these points.

Has there been a shift in judicial attitudes in Namibia? It must be remembered that 1980 was the high water mark for PLAN's activities in Namibia. Ida Jimmy's judge was from SA. Recent appointments have increased the number of Namibian judges. And since the amalgamation of local and regional courts a year ago, all cases that may carry more than five years imprisonment, or civil compensation of more than R2 000 are heard by the supreme court.

Another change is that before about 1980, political cases were often defended by imported top SA counsel, whereas now local advocates are almost

invariably briefed - and it appears that their sense of the intricacies of the Namibian situation is bearing fruit.

Perhaps the most important factor, though, is that civilians are increasingly breaking the almost total seal of silence that has held them for so long.

One of the themes emerging in the last year is the increasing number of affidavits, testimony and civil applications being brought by civilians in the 'operational area'. This includes Ovambo, Kavango, Kaokoland and the Caprivi, where the police counter-insurgency units are formally responsible for information gathering (interrogation) and follow-up of insurgents, and indeed maintain much of the basic civilian control.

These units are manned by locals and officered by whites, and are responsible for 90% of the killrate within the country. A number of charges or investigations of police and military personnel have followed affidavits by locals about violence used against themselves or their neighbours.

Further, the activities and techniques of counter-insurgency units and official interrogators, which were dark rumours two years ago, are now common knowledge, substantiated by case after case.

One of the most important of these was the Kakuva case. The wife and brother of a Kaokoland farmer brought an application to have him declared dead. He had never reappeared after having been detained by security police on suspicion of aiding PLAN along with 25 of his neighbours in August 1980.

Research by lawyers lasted for two years and the case went on for months. It included testimony by a Windhoek architect as to the design and measurements of a torture compound he had been shown in the operational area; and one of his co-detainees testified that he had heard Kakuva's screams dying away, and had had his body thrown on top

of him. Counsel's intention was to prove that beatings and torture were a routine factor of information gathering in the operational area. Justice Mouton found that Kakuva had died in security police custody as a result of assault. The respondents (the Administrator-General and the Minister of Police) are appealing. It remains to be seen what the appeal court in Bloemfontein will make of the evidence.

In the course of the case, counsel for the security police demanded that Kakuva's counsel reveal who was paying them. This was denied. But widespread speculation that the churches are supporting at least some of the cases (and certainly they have the most widespread channels of information in the operational area) has led to sporadic attacks, particularly on the Council of Churches in Namibia.

Last week two members of the SA Police's counter-insurgency unit, Koevoet, were restrained by the Windhoek supreme court from harming an Ovambo businessman who fears for his life at their hands. One of the two, Karel Hamakali, claimed, while threatening the applicant, to have killed a man at a bar belonging to another businessman, and may be charged as a result of the applicant's affidavit.

The applicant, Solomon Kanjolomba, said he brought the application because it appears to be a futile exercise to seek protection from the police from policemen.

Kanjolomba had fired Hamakali's sister from his shop after four days employment. He said that after Hamakali had been prevented from shooting him by the intervention of two police constables, he closed all his shops for the day, and kept the cuca shop (which sold liquor) closed, because 'it is known that members of Koevoet, unlike the Defence Force, carry their weapons with them when they drink, even when they are drunk'.

These are just instances of legal cases arising out of Namibia's war. There are routine charges of rape and murder, inquests on civilians shot, and many detentions. A number of lawyers agree that, as one put it, 'We have more security legislation here than in South Africa, especially for the operational area. Anybody can be accused of giving aid to PLAN and shot, even for the crudest personal gain. Most often, bodies that are left after an accidental, or spiteful, or drunken, shooting can just be quietly buried'.

Namibia's population is small, and its legal circles are tiny. News and attitudes spread fast. A judicial concern rather more complex than the simple desire to 'support law and order and punish the terrorists' is becoming a stronger theme. Apprehension about long-term consequences of the conduct of the war in the north seems to be placing the judiciary in a position of striving against legal constraints, and all the odds of war, to render some redress.



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