

Commission On Independence For Namibia

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Report of the
First Observer Mission
of
THE COMMISSION
ON INDEPENDENCE FOR NAMIBIA

July 1989

Project Director

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From June 18 to 25 1989, the first observer mission of the Commission on Independence for Namibia visited Namibia. The members of the first observer mission were Goler T. Butcher, Howard University professor of law; John W. Douglas, Partner, Covington & Burling; Nathaniel R. Jones, Judge, United States Court of Appeals; Robert H. Kapp, Chairman of the International Human Rights Law Group; Henry J. Richardson, Professor of Law, Temple University. This report contains their findings.

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EXECUTIVE SUMMARY

Our delegation visited Namibia from June 18 to 25, in order to study first-hand the events during the early phase of Namibia's transition to independence through free and fair elections under Resolution 435.

We spoke with a wide range of individuals across the political spectrum, with representatives of the major parties, church leaders, union members, the Administrator General and his staff, Martti Ahtisaari and other officials of the United Nations Transition Assistance Group (UNTAG), as well as ordinary Namibians. We spent time in Windhoek, Katatura, Khomasdal, Rundu, Oshakati, Oniipa and Ongwediva.

We left Namibia with a mixture of admiration and deep disquietude - admiration for the determination of the Namibian people to achieve their long-delayed independence and disquietude over the tremendous and unnecessary obstacles to the free and fair elections scheduled for November.

On the basis of our observations, the following are our major concerns.

I.

The continued operation of former Koevoet personnel in the north, under the banner of the South West Africa Police (SWAPOL), creates dangers, real and perceived. Former Koevoet members, once described by one of their own as exterminators, symbolizes the terror of the past war in the north. They still drive their dreaded Casspirs. On one day last week (June 13) 80 were counted passing in front of the Ongwediva refugee reception center. They still carry automatic R-4s. They still operate primarily from their former bases. It is a travesty to suggest that they now constitute legitimate civilian police.

We heard credible reports of assaults, death threats, violent disruptions of meetings, and sexual assault. We also heard

credible reports about night raids and Koevoet moving from house to house and village to village searching for returnees and their families to intimidate and harass.

It is essential that the conservative estimate of approximately 1500 former members of Koevoet be dismissed promptly from SWAPOL. There can be no place in a police force for anyone who was a member of such a notorious and ruthless organization. Their continued deployment in the police constitutes a flagrant violation of the letter and the spirit of Resolution 435. General Hans Dreyer, who was the founder and leader of Koevoet, should be removed from his current post as commander of police in the northern area.

In addition, the use of Casspirs should be banned. They conjure up the terror of the past. They were the means and the symbol of intimidation. They have no legitimate policing function today.

Considering the provisions and spirit of Resolution 435, we are concerned that law and order; for which the AG has "primary" but not exclusive authority under 435, is not being administered with the same "impartiality" that the AG has long demanded of the United Nations for Namibia.

II.

UNTAG is not presently capable of defusing the atmosphere of intimidation that pervades much of Namibia. It is woefully understaffed and inadequately equipped to fulfill the responsibilities of its mission. There are too few police monitors to accompany each SWAPOL patrol. They are not authorized to participate directly in police investigation of complaints and when SWAPOL declines to carry out many investigation of serious complaints, UNTAG cannot compel it to do so. These limitations have confused, angered and demoralized Namibians.

III.

The basic structures of apartheid still exist in this country in the form of AG8, which acts as a continuing impediment to free and fair elections. It should be promptly repealed. Those who fled Namibia to escape apartheid are returning to find its key structures still embedded in their country's laws.

IV.

The laws governing the whole electoral process have been delayed far too long. They have not been promulgated at this late date, only 10 days before the scheduled start of the electoral cam-

paign. This has made it impossible for the political parties to commence the kind of organizing and educational activities which are an essential part of free and fair elections.

V.

The law governing voter registration is seriously flawed. This is no ordinary election. It is an election which will determine the future structure of a newly independent nation. The laws that define voter eligibility should limit the vote to those for whom the South West Africa Mandate was established by the League of Nations, i.e., bona fide Namibians. Eligibility should not be extended to civil servants or military personnel temporarily seconded to Namibia by South Africa as part of its occupation administration.

Citizens should register and vote in their district of residence or work. The law, which permits registration and voting anywhere in the country, makes it virtually impossible to check the eligibility of voters - certainly in the absence of a national voters' roll.

VI.

The widely discussed plans for the conduct of the voting are even more troubling. The approximately 40% of the electorate that are illiterate would be able to receive help in marking their ballots only from the government employee who is the chief election official at the polling site. Ballots would be placed in sealed numbered envelopes which could be traced to individual voters. Given South Africa's illegal domination of Namibia, these provisions, if promulgated into law, would destroy public confidence in the secrecy of the ballot. They create a massive opportunity for conversion of the election.

The plan to transport all ballots to Windhoek rather than count them at the polling locations is fraught with danger and is an invitation to fraud. The presence of UNTAG officials at the polling stations, during the vote count and during transit will clearly not cure these defects. Furthermore, it is understood that the counting of the ballots in Windhoek will take as long as two weeks, a delay that is likely to lead to unrest and a lack of faith in the results.

VII.

There are certain basic safeguards to free and fair elections. One is fair access to the media by all political parties. This is a critical requirement in a country like Namibia, where the

government has a monopoly over television and radio and where 40% of the population is illiterate. Consequently, special measures must be taken to ensure impartiality. In particular, the ethnic radio stations reach a constituency with little access to other sources of information. They must be monitored carefully to guarantee even-handed coverage of all election issues.

VIII.

Another area calling for special measures relates to access by bona fide representatives of political parties and by UNTAG to the approximately 30% of the work force who work and live on large farms. Access to these workers has been strictly controlled by farm owners, who dominate the lives of their laborers and who may seek to control their political choices.

* * * * *

In spite of all the problems, there is an enthusiasm in this country about impending independence that is infectious. And, during our visit we were privileged to witness rare moments in history. For example, the day that we visited the returnee center at Ongwediva as thousands of people gathered to joyously welcome home the returnees - the brothers who embraced after 15 years apart, the cousins reunited after one had disappeared without a trace.

We were also tremendously impressed by the efficient and humane operation of the reception camp at Ongwediva by the U.N. High Commission for Refugees (UNHCR) and the Council of Churches of Namibia. We also pay our respects to the many UNTAG people who are clearly trying to do their best under severe restrictions and with limited resources.

On the basis of our observations, however, we conclude in general that the U.N. "supervision and control" of South Africa's role in the transition period to date has failed to produce the conditions which are the prerequisites to the free and fair elections called for in Resolution 435. The process is currently being undermined in various ways which would either inhibit the making of a free and fair choice by Namibians or allow the possibility of fraud in the electoral process itself.

GENERAL CLIMATE

The Namibian electoral process takes place in the aftermath of years of savage warfare and against a background of more than 20 years of illegal occupation by the Republic of South Africa.¹

A pervasive atmosphere of fear and terror hangs over Namibia, particularly in the North. This is primarily attributable to the presence of former Koevoet personnel in the South West Africa Police (SWAPOL), which under Resolution 435 has the initial responsibility for maintaining law and order in the territory during the transition period. The responsibility for the police function in the polarized North has thus been entrusted to the most ruthless and brutal element of one of the former combatants. In the North SWAPOL is commanded and dominated by former Koevoet members. They represent a substantial majority of police personnel in the North. They continue to drive their dreaded Casspirs (armored personnel carriers), which symbolize the terror of the war.

This pervasive atmosphere of fear is heightened by recurrent incidents of Koevoet intimidation, which take the form of physical violence, threats of physical violence and of psycholog-

¹ After World War I the League of Nations assigned Namibia, then German South West Africa, to South Africa as a mandated territory. In 1966 the United Nations General Assembly revoked the mandate because of Pretoria's gross maladministration of the Territory in violation of its contractual obligations. The International Court of Justice has affirmed that South Africa has occupied Namibia illegally ever since.

ical intimidation. Large segments of the population, particularly those employed by public agencies and white landowners, are economically dependent upon the existing order and are vulnerable to all kinds of intimidation. The flames are fanned by the circulation of rumors and exaggerations which are compounded by a lack of information and much misinformation about the Resolution 435 process.

The country is deeply divided, indeed fragmented, politically, to a considerable extent along racial lines. Although Namibia has a population of 1.6 million, it has eleven ethnic groups and over 40 political parties. Seventeen of these political parties have already indicated their intention of contesting the elections.

As reported by the National Democratic Institute,² there is widespread distrust in the impartiality with which the Resolution 435 process is to be administered, and in the good faith of the South African authorities. The climate in this respect has been clouded by repeated delays in the implementation of the Resolution 435 process.

There is also evidence of a pattern of official interference with political association and the conduct of political meetings.

² See Report to Martti Ahtisaari, UN Special Representative, issued June 5, 1989 by the National Democratic Institute For International Affairs.

There have been reports that meetings have been broken up by police, sometimes on the thinnest of pretexts. The Administrator General has admitted to a practice of official surveillance of political meetings.

INTIMIDATION

There is an unacceptably high level of intimidation in northern Namibia, particularly in Ovamboland, caused by police forces and directed against actual or potential South West Africa Peoples' Organization (SWAPO) sympathizers. Unless changed drastically in the near future, this intimidation will preclude the free and fair elections which are the prerequisites to the carrying out of Resolution 435. We received only scattered reports of acts of physical intimidation by civilian partisans of one or another political group.

SWAPOL is reported to have 6,000 members at present. The U.N. has not made a physical count, but has accepted SWAPOL's own figures on the subject. Of this number approximately 2000 are reported to be deployed in the North, of which 1500 are former members of Koevoet ("crowbar").

South Africa formed Koevoet as a counter insurgency unit during its war with SWAPO combatants organized as the Peoples Liberation Army of Namibia (PLAN). Koevoet was a ruthless, search-and-destroy paramilitary organization. It has been the

object of world-wide condemnation for atrocities against both combatants and civilians. In one court proceeding involving a Koevoet member, a defense witness described them as trained killers. Another former member testified in another case that a basic Koevoet principle was the extermination of SWAPO members. It is not surprising, therefore, that Koevoet generates great fear and hatred throughout Namibia, particularly in the North.

Koevoet was organized and led by South Africa's Col. Hans Dreyer. He had previously officered the Selous Scouts, a similar paramilitary organization which supported the former white government in Rhodesia with extremely violent and brutal tactics.

In 1989, as the transition process began, the Koevoet organization was formally dissolved. Some members were let go and pensioned off. Most, however, stayed in service and they were folded en masse into SWAPOL, where they remain today. They operate primarily from the same former Koevoet bases. The commander of SWAPOL in the North is the same General Dreyer who had been the sole leader of Koevoet.

Today, former Koevoet members continue to ride in the same 16-ton Casspirs, which are both the symbols and instruments of violence and intimidation. These large armored vehicles can carry machine guns outside and inside. The traditional complement is 8 to 10 men, with the Casspir commander usually being

white and the other personnel being black. Koevoet personnel usually carry pistols and automatic R-4 rifles. On our two-day visit to the North we saw scores of Casspirs on the move and we can attest to how intimidating is their presence. Fear is heightened for the local population by the bitter memories of the Casspirs' use against civilians as well as combatants.

There is also significant intimidation emanating from the former members of the South West Africa Territorial Force (SWATF). Under Resolution 435, these forces were supposed to be demobilized and disarmed. These objectives have not been achieved. The units have formally disbanded, but former members of the SWATF battalions, such as the 202 Kavango battalion and the 101 Ovambo battalion, are continuing on the payroll until November. To receive their bi-weekly pay they must report to central locations. Many of them have been given arms and some have engaged in acts of physical intimidation and brutality against SWAPO members or sympathizers. It was reported, for example, that when these battalions were remobilized briefly on 1 April, they were given guns and other weapons of which no records were kept, leaving questions as to whether all of those arms have been surrendered to the United Nations Transition Assistance Group (UNTAG).

There are many credible reports of continuing acts of violence committed by former Koevoet members in the North. Those

acts are not isolated. They constitute a pattern and practice of deliberate intimidation. The following are typical of such reports.

On 4 June in the Oshakati area, an ex-Koevoet member assaulted the assistant to a tailor who had SWAPO colors outside his shop. The assailant threatened to kill him. On 16 June several former Koevoet members assaulted the tailor himself, threw him in a Casspir and arrested him. He spent three nights in jail without being informed what the charge was. On 10 June, former Koevoet members assaulted three girls wearing SWAPO T-shirts at Mbulantu.

On 10 June in Olapatu armed Koevoet personnel approached a small group of peaceable individuals wearing SWAPO colors. One policeman hit one of them in the ribs, adding the taunt "Go tell that to the U.N."

A respected human rights lawyer reported that on 22 June he accompanied a victim of a Koevoet assault to a SWAPOL station in Oshakati where they lodged a complaint against the assailant. The victim's face was badly bruised and swollen; the victim reported that he had been beaten at a police station and there subjected to electric shock on his ears.

A regional UNTAG official informed us that in the recent past a Koevoet member had made a sexual advance to a woman outside a camp near Oniipa. When the woman refused the advance, the Koevoet member had beaten her.

A high official of the Lutheran Church reported that on 18 June, several Casspirs, with mounted machine guns, had driven up to a church, about 130 kilometers west of Oniipa. The Koevoet police then broke into the parsonage, ransacked it and broke chairs and beds.

There is also a continuing pattern of acts of non-violent but serious intimidation directed against returnees and their families. The modus operandi is as follows: a number of Casspirs, sometimes as many as four to eight, suddenly descend on a rural homestead, usually at night; the inhabitants and neighbors are naturally terrified; the former Koevoet members, some of them recognized as such by the inhabitants, demand to know "Where is the returnee?"; they frequently also make such statements as "We want him to know we're waiting for him," or "We'll kill him if he does any work for SWAPO."

Since an amnesty has been declared, there is no justification for such visitations. Officials in the Administrator General's office conceded as much to us. But there is no indication that this view has inhibited that type of illicit intima-

tion by the police. Indeed, it seems apparent that the Casspir personnel utilize the addresses of returnees which have been provided to Namibian authorities as the returnees disembark from U.N.-chartered flights.

UNTAG's monitoring of SWAPOL's investigation of complaints against itself is inadequate for two fundamental reasons. First, UNTAG does not participate directly in the investigation of complaints; it only reviews the reports made by SWAPOL itself. UNTAG does not initiate any investigations on its own.

Second and more important, the notion of systematic SWAPOL investigations is a fiction. Responsible UNTAG officials informed us that SWAPOL often simply refuses to investigate serious matters at all. In other such cases, SWAPOL frequently "closes" the investigation after doing very little. SWAPOL's obduracy is a blatant affront to UNTAG authority to supervise and control the transition process, and, accordingly, we are skeptical that the recent dispatch of new SWAPOL investigative units to the North will make any difference in this process.

In any event, it would be a misrepresentation to suggest either that there is now in place a responsible system of SWAPOL investigation of complaints against its own members or that UNTAG is able to monitor such investigations. Until this situation is corrected, it is only realistic to expect that many rank-and-file

citizens with justifiable complaints of police intimidation will not file complaints with SWAPOL or the U.N. Thus the number of complaints is by no means an accurate measure of the actual level of intimidation.

Drastic changes are needed and needed promptly. Former Koevoet members should be removed from SWAPOL and Koevoet's founder and leader, General Dreyer, should be removed from his position as SWAPOL commander in the North. The use of Casspirs should be banned.

Former Koevoet members have no place in a normal police force. They are trained as killers. Their training was not that of normal police. A SWAPOL official conceded that they did not measure up to the levels of other members of the police; yet, in the North, Koevoet members constitute the overwhelming majority, approximately 80%, of the SWAPOL total. Given Koevoet's ruthless history, it is impossible for the current SWAPOL forces to establish the rapport and confidence with civilians which are essential to the even-handed maintenance of law and order.

Indeed, it is a travesty to suggest that the former members of such a notorious group can now form an appropriate part, much less a major part, of any civilian police force. They do not begin to approach the standards of suitability which Resolution 435 demands of Namibian police members and which is the U.N.'s

responsibility to enforce as part of its "supervision and control" of the transition process.

The arguments for retention of the Koevoet and their Casspirs are unpersuasive. We received no specific evidence that there was an ongoing, significant military threat that would justify their continued deployment. Members of the Administrator General's (AG) office cited only one armed skirmish in recent weeks, and in that single encounter no member of the police or military was killed or wounded; one alleged SWAPO or Peoples' Liberation Army of Namibia (PLAN) member was killed.

Similarly, the asserted presence of land mines does not justify the widespread, current use of Casspirs. We saw scores of Casspirs, many in the vicinity of returnee camps where there is no longer a land mine threat. On one day alone in the week of 12 June, UNTAG reported that 80 Casspirs passed by on the road immediately in front of the returnees' camp at Ongwediva. Earlier, four of the Casspirs had simply parked near the entrance to the camp. Later on, a number of Casspirs patrolled back and forth for hours on the road in front of a nearby secondary camp for returnees.

Equally without justification is a SWAPOL claim that it must use Casspirs because of budgetary constraints. The rationale was that South Africa has cut back on its financial support to

Namibia and that accordingly SWAPOL is financially strapped and must use the Casspirs to transport personnel from one site to another. The explanation is not credible because each Casspir weighs 16 tons, costs approximately \$200,000, consumes tremendous amounts of fuel, and must travel at slower speeds than ordinary vehicles. Clearly, it would be far more economical to use ordinary vans for transport purposes.

The number of UNTAG police personnel is grossly inadequate. Their deployment is paper thin. They do not begin to cover the vast majority of SWAPOL patrols. SWAPOL does not supply to UNTAG, as some have suggested, an accurate list of prospective patrols; the list is typically inaccurate, incomplete or untimely. In the North, at the time of our visit, there were fewer than 200 UNTAG police to monitor SWAPOL's approximately 2000 personnel.

There is little doubt, however, that UNTAG police are doing the best that they can. They are diligent, conscientious professionals. Their presence at the large political rallies of the major parties acts as a strong deterrent to acts of violence from any quarter. But they are far too few in numbers. The planned addition of 500 more police, which will not be completed until August, will not be sufficient. For one thing, many of them will have to be deployed at voter registration stations. If the U.N. is to achieve effective deterrence against the current

level of violence, it will thus need many more police officials in the North alone over and beyond the planned 500 man addition. As things stand now, UNTAG has not begun to secure the conditions which would permit free and fair elections.

THE MEDIA

One bright spot in the political environment is the considerable freedom and vibrancy of the print media. Namibia has five privately owned newspapers which are free of official censorship. However, there is some cause for concern on this front arising from the initial focus of the O'Linn Commission on the accuracy of news reports published in The Namibian concerning intimidation.

The O'Linn Commission, chaired by Windhoek attorney Brian O'Linn, was established by the Administrator General with a mandate to inquire into and report on questions of intimidation. The Commission is just getting underway and it is too early to pass any kind of definitive judgment on the utility of its work. However, we are seriously troubled by some of the Commission's key terms of reference.

First, while Mr. O'Linn has a fine reputation, the Commission is not truly independent. The Administrator General appointed all of its members and can fire any of them. He also

sets the budget. Further, appeals from the decisions of the O'Linn Commission go to the AG, not to the courts.

Second, the Commission can compel reporters to disclose sources of their articles on intimidation and it apparently intends to pursue those sources of information with vigor. Such an approach would surely chill the press freedom which is particularly important in a society that is emerging from South African domination and where there is currently a lively and healthy competition in the print media.

Similarly, we find potential danger in that term of reference which authorizes the Commission to break the attorney-client privilege. That privilege is one of the fundamental building blocks of a democratic system of justice.

Furthermore, the Commission has the power to compel a newspaper to print the Commission's version of a disputed incident or incidents involving alleged intimidation. True, prior to issuing such orders, the Commission will hold hearings and take evidence on such matters although whether the hearings will be open or closed is left to the discretion of the Commission or, in some instances, the AG. But the power of a state agency, such as the Commission, to force newspapers to publish what that agency believes is the truth has no precedent, so far

as we are aware, in democratic societies. It is fraught with dangers of an authoritarian stripe.

In sharp contrast to the robust quality of the print media, radio and television broadcasting is tightly controlled through the government monopoly, South West Africa Broadcasting Corporation (SWABC). UNTAG has referred to SWABC as blatantly biased. There have been frequent reports that the 10 ethnic radio stations are being used as a vehicle for state sponsored propaganda. This is a matter of particular concern in the Namibian context where 40% of the population is illiterate and many people live in isolated rural areas. Radio is for the vast majority of Namibians the only source of information. The O'Linn Commission does not monitor the state-controlled radio broadcasts as it does the print media.

THE DISCRIMINATORY AND REPRESSIVE MACHINERY

Notwithstanding the issuance of an amnesty proclamation and a repeal of discriminatory and repressive legislation, significant problems continue regarding both.

The Amnesty Proclamation AG 13 of 1989 (7 June), bars the commencement or continuation of any criminal proceeding in any court against specified Namibians for any offense committed anywhere before the Proclamation was issued. Specified Namibians include: (a) any person born in the Territory or his/her spouse or child who (i) was "ordinarily resident" outside the Territory

before the issuance of the proclamation and (ii) after that date enters the Territory through a point of entry designated by the AG and has documentary proof of such entry; and (b) any other (category of) persons designated by the AG.

Concerns regarding the Amnesty Proclamation arise on the following grounds:

- (a) It does not cover Namibians who reside in Namibia, nor refugees who return through other than designated entry points;
- (b) it does not cover civil proceedings;
- (c) it is not clear whether the amnesty is permanent (as is a pardon) or may be terminated, either by the AG or by a future independent Namibian government; and
- (d) it gives the AG power to grant amnesty to other Namibians at his discretion, on a possibly discriminatory basis. UNTAG was unable either to have the amnesty extended to all Namibians or, alternatively, to limit the AG's power to extend it arbitrarily to any person he may choose, such as former members of SWAFT or Koevoet who may have committed serious violations of human rights.

Concerns regarding the repeal of discriminatory and repressive legislation, an issue that was disputed between the AG and UNTAG, relate primarily to the failure to repeal the basic law

establishing the apartheid structure in the country, the Police Act and certain other laws.

In sum, all of the discriminatory and repressive laws have not been repealed. Proclamation AG 14 of 1989 ("Abolition of Discriminatory and Restrictive Laws for Purposes of Free and Fair Elections"), covers only an initial list.

The Proclamation was issued on 5 June and gazetted on 12 June. It repeals 36 laws and amends 10. AG 14, inter alia, spells an end to detention without trial (Terrorism Act, AG 9 (1977)); AG 26 (1978); the end of forced conscription into the SADF/SWAFT (Defense Act); the lifting of the curfew in the North (AG 9 (1977)); and an end to the South African State President's authority to terminate trials of SADF members (Defense Act).

It appears that there may be at least one further repeal, but again, this will not be comprehensive. On 6 June the AG implied that AG 14 repealed the lion's share of all laws to be amended and repealed. On the same day, however, the Special Representative (SR) suggested that the proclamation covers only an initial list of laws. In our conversation on 19 June, UNTAG suggested a second tranche was on its way. AG 14 provides, however, that the right to request further repeals is granted only to the vague category of persons "having an interest in the election." Under that Proclamation the final decision was based

solely on the AG's discretion, and he is not required to provide any rationale for his decision. Although this puts the AG in a strong position, Resolution 435 requires the SR to be satisfied as to all "measures" taken that can affect the election.

Notwithstanding the explicit requirement of Resolution 435 that all discriminatory laws which might abridge or inhibit a free and fair election be repealed, the basic framework of apartheid policy, established in Proclamation AG 8, has been retained and entrenched. Proclamation AG 8 of 1980 divides the total population of Namibia into 11 population groups along racial and ethnic lines and establishes 11 semi-autonomous ethnic "second-tier" governments (called "representative authorities") for Namibia.

Under Proclamation AG 8, responsibility for education, health services, social welfare services and public housing is entrusted to the ethnic administrations. The financial resources available to each ethnic group to provide these basic social services are grossly disproportionate.³

³ Prior to the commencement of the Resolution⁴³⁵ process, the Supreme Court of South West Africa declared in an advisory opinion that Proclamation AG 8 contravened Article 3 of the Bill of Fundamental Rights of the Territory. Ex Parte Cabinet for SWA: In Re Advisory Opinion, 1988 (2) SA 832. The Administrator General took no action to abolish or modify AG 8 in light of the Supreme Court decision.

Instead of its repeal, AG 8 has now been modified by transferring the powers formerly vested in the ethnic authorities to the AG. The practical effect of this modification is to entrust the running of the "homelands" to white South African civil servants, who are controlled by and answerable directly to the AG, South Africa's representative in Namibia. Thus, under the modified AG 8, the homelands and the inequalities between ethnic groups, not only remain fully intact, but South Africa's direct power over them has been consolidated and strengthened. Local observers claim that formerly the full weight of apartheid oppression was diffused somewhat because Pretoria relied on incompetent local leaders.

The retention of AG 8 is highly divisive, inhibits freedom of movement, impedes open political debate and is symbolic of a condition of oppression. It poisons the political atmosphere. As such, it is entirely incompatible with Resolution 435 which calls for free and fair elections "for the whole of Namibia as one political entity."

An additional concern, particularly in the North of the country, arises out of the failure of the AG to repeal the Police Act, No. 7 of 1958. This act allows the ill-trained, "bully-boy" forces established by tribal, communal, and regional authorities to perform police duties. In addition, secs. 34 and 34 (a) of the Act provide for the appointment of "special constables" and

create a police reserve of former SWAPOL and South African police members. To the extent such special constables are appointed, they increase the number of police whose conduct must be monitored by the already understaffed UNTAG police monitors.

Finally, although AG 14 repealed most (not all) repressive laws, there are reports that the AG intends to enact new laws, with new titles, that will incorporate many of the key provisions of the repealed laws. This is a matter of great concern. Of further concern are reports that the application of the substance of the now repealed discriminatory and repressive laws may be continued on the white-owned farms under a questionable private property concept.

REPATRIATION OF REFUGEES

The Observer Mission found that serious problems hamper the successful and timely repatriation of all Namibian refugees desiring to return home -- a cornerstone of Resolution 435. The exact number of Namibian refugees scattered around the world is not known. One estimate was as high as 58,000. On 1 June the United Nations High Commission for Refugees (UNHCR) representative Bakwira reported that 41,000, mostly women and children, had registered with his agency.

Repatriation was scheduled to begin 15 May. However, under the terms of Resolution 435 there were two prerequisites (para. 7

B, s/12636) to the start of repatriation which was scheduled to begin 15 May:

- (a) the proclamation of an amnesty covering the returnees so that they could not be prosecuted for ancient "crimes", including that of leaving Namibia illegally; and
- (b) the repeal of discriminatory and repressive legislation, so that the refugees would not have to return to the conditions that caused them to flee in the first place.

An amnesty was not proclaimed, however, until 7 June because of substantial disagreements between the AG and UNTAG.

On 12 June, about a week after issuance of the Amnesty and Repeal of Laws Proclamations, the first refugees arrived, to the wild exultation of singing, dancing, chanting, and ululating crowds, who continue to return and demonstrate outside the reception centers as each new group of returnees arrives.

The elation and joy of the people at the return of the first group of refugees dramatically revealed the enthusiasm of Namibians for independence. We were privileged to witness this rare moment in history, as for example, the day, some of our delegation visited the returnee center at Ongwediva as thousands of people gathered joyously to welcome home the returnees, the family members who embraced after 15 years apart, the cousins reunited after one had disappeared without trace.

We visited the reception camp at Ongwediva and were tremendously impressed by the efficiency and humane operation of the reception camp run by the UNHCR and their implementing partner, the Council of Churches in Namibia (CCN).

A crisis of sorts was clearly developing while we were there, however, because of the reluctance of the refugees to leave the primary and secondary centers and go home. The original plan scheduled the refugees to arrive over a six-week period, six days a week, and to be processed at the primary reception centers; most of them are to spend 1-7 days there. If they are unable or unwilling to leave after a week, they will be transferred to secondary reception centers, although these were intended primarily for older persons, orphans and pregnant women. On departure from the centers, they will be given a month's food rations and other items. The World Food Program (WFP) will continue supplying food for another 11 months.

It has not worked out as planned. The UNHCR and CCN reception centers are indeed to be praised. But the level of Koevoet and Casspir intimidation in front of the Centers and/or back in the villages of the returnees has caused serious delays in the planned process. We heard highly credible reports that many refugees are afraid to return home to rural areas. In some cases, they have been warned by their families that it would be

too dangerous because UNTAG has not been able to protect the local people from violence by Koevoet and other forces.

We found that, notwithstanding the moving out of a significant number of refugees from some of the centers, other centers were quickly approaching capacity. Refugees were arriving daily into the Centers and daily moving out from Centers, but their numbers in both cases were smaller than anticipated. As of 23 June only 7,448 refugees had returned and 2,013 had departed. With many refugees refusing to leave the secondary centers, the back-up has reached the primary centers, so there are fewer and fewer places for new returnees.

The Observer Mission was candidly advised that the repatriation process is in jeopardy. At a minimum it appears that it cannot be completed on time. On 1 June AG spokes person Gerard Roux stated that unless the repatriation of refugees was thoroughly underway by mid-June, the scheduled election might have to be delayed.

The delay in starting the repatriation and the slower process of moving the returnees out to their villages make unlikely the realization of UNTAG's current projection for the completion of this process is the end of August. Thus, the original date for completion of voter registration may have to be extended for late returnees at least until 15 September. The

Observer Mission was informed by Chief Election Officer A.G. Visser that this would be done under the provisions in the Voter Registration Law that provide for extension of the registration period by the AG.

POLITICAL PRISONERS

Under Resolution 435 all political prisoners were to have been released by the first week of June. "Political prisoners" include persons convicted of political offenses; persons detained without trial by police or civilian authorities; and persons detained by the military.

Soon after 1 April UNTAG received lists from various sources totalling some 300 political prisoners allegedly held by the South African authorities and 200-300 prisoners held by SWAPO. The SR sent letters requesting information regarding political prisoners to the AG, SWAPO and the governments of South Africa, Zambia and Angola.

On 24 May SWAPO announced that it had released a group of detainees in mid-February, who, pursuant to its policy of "national reconciliation", would be treated like all other refugees and return through the repatriation centers. Cedric Thornberry, Special Assistant to Ahtisaari, confirmed the release of 204 detainees. The release has been questioned by the anti-SWAPO "Parents Committee", the South African government, and some

political parties. The UNHCR reportedly was not permitted to enter the camps to verify the number and names of detainees. Reports published recently in The Namibian describe angry SWAPO detainees and their charges of mistreatment and torture by SWAPO. We were informed by a Western diplomat that the camps were now under the control of the Angolan government and that an agreement had been reached pursuant to which the UNHCR would be permitted to enter the camps and verify the number of detainees.

Under Resolution 435, disputes relating to the classification of persons as political prisoners are to be resolved by an independent jurist attached to UNTAG. Arguments concerning at least 25 alleged political prisoners held by the South African authorities were presented to the independent jurist in mid-June. The central issue apparently was whether a person convicted of a common law crime for a political objective is to be classified as a political prisoner. As of late June no decision had been reached by the independent jurist and the 25 remained in prison.

THE ELECTORAL LAWS

Before any measure affecting the political process is taken by any government official or entity, the Special Representative is required to "satisfy himself" as to the "fairness and appropriateness" of the measure. The primary function must be to assure "free and fair elections". Implicit in that essential

requirement is the authority to hold up the process, the election itself, or the results thereof in the event he is not satisfied.

Whether the election is in fact a free and fair one, depends upon the way in which it is conducted. Thus, the extremely close scrutiny we found being paid to the draft voter registration proclamation and indeed, the laws governing the whole electoral process, by Namibians, becomes understandable.

With these matters in mind we note that Resolution 435 provides that the laws under which the election is to be conducted shall be promulgated by mid-May in order to give all the political parties sufficient time to organize and prepare for the campaign, which commenced on 1 July. The voter registration law was not promulgated until 30 June and the publication of the draft electoral laws³ has not taken place yet.

Given the function of these rules to the success of a free and fair election, this delay adds another unsettling factor to the numerous others we outline in this report.

A draft registration law was published on 24 April (General Notice 58) giving the public three weeks to submit comments. The Lawyers' Committee for Civil Rights Under Law filed its comments with approximately 70 others from Namibian and international organizations. The final version of the registration law went

into effect belatedly on 30 June. It has major defects which will carry over to the election itself in November. It is regrettable that UNTAG approved the statute. The last-minute exchange of letters between the Administrator General and the Special Representative, seeking to assure U.N. presence at key stages in the electoral process, did not cure these defects.

First, the law allows any would-be voter to register in any region in the country he or she wishes regardless of his or her place of residence or work. This will facilitate the registration of unqualified persons because the process will not be subjected to the scrutiny of neighbors or co-workers who know the would-be registrant.

Thus, a person who lives in the South can register hundreds of miles away where nobody knows him. And similarly, a resident of the North can register in the South where he is similarly unknown. The registration-anywhere system will surely encourage attempts by some ineligible South African nationals to enroll at sites where there are thought to be sympathetic or incompetent registrars.

Second, the challenge system provides no real check on illegal registrations. Challenges must be made within 21 days of each challenged registration; yet, according to Chief Election Officer A.G. Visser, there will be no national list of registered

voters until the close of the registration period, now scheduled for 15 September, by which time the 21-day challenge period will have elapsed for the vast majority of registrants.

While weekly lists of registrants will be published on a regional level, that will not provide an adequate basis for challenge. If a listed registrant is not known to local residents, local workers or local party officials, there is no way that the latter individuals can tell whether, for example, the unknown registrant may have qualified by reason of residence elsewhere in Namibia. This would take prodigious checking all over the country, a virtual impossibility, given the short 21-day challenge period and the intensity of the campaign itself.

Finally, the challenge process laid down in the Registration Law, is elaborate, complicated and time-consuming. Under the circumstances we must conclude that the challenge process is illusory. It will not protect against the vote padding which the registration-anywhere provision facilitates.

Among the most serious shortcomings of the new law (and its interpretation) are those relating to qualifications to vote. The law bars persons born in Walvis Bay (who consider themselves, and are generally considered, to be Namibians) from voting. At the same time, it would extend the vote to certain Angolan refugees in Namibia (many of whom have reportedly been given

Namibian ID cards) and seconded South African civil servants who merely state an "intention" to become Namibian citizens.

We received a frank exposition of the basic structure of the voting procedure from Chief Election Officer Visser. He informed us that the system has been decided upon, senior officers selected, and training of officials begun.

Specifically, he described the following procedure for casting and counting the votes on election day. The individual goes to the polling station and presents his/her registration card to the election official. The voter will sign the registration card or affix his/her thumb print and surrender the registration card to the election official.

Before voting a person's hand will be examined under an ultra-violet light to determine if it retains the chemical applied at the time of voting -- preventing multiple voting. The person will be given a ballot and will cast the ballot in a private booth. Each ballot will contain a listing of the name of the parties, the initials and the symbols (similar to that used in previous elections).

The ballot will be sealed in an envelope on which will be placed the number shown on the registration card of the voter.* On the registration card the election official will write the number of the ballot box into which the ballot was dropped. The registration card will be filed.

There will be approximately 400 polling stations of which 140 will be permanent and the remainder mobile. Each station will contain multiple voting booths with an average of 1500 voters casting ballots at each station. A voter may cast his vote at any polling station in the country regardless of place of registration. Balloting will take place over a four day period. Inside each polling place will be a presiding officer, as many as three teams of polling officials, an UNTAG monitor and political party representatives. At the end of each day's balloting each of the above representatives will affix their seal to the ballot box to maintain overnight security. At the completion of voting the presiding officer prepares a tally sheet of the number of ballots cast, unused and spoiled.

The tally sheet, the sealed ballot boxes, unused ballots and envelopes, spoiled papers and envelopes and the file of registration/identity cards will then be transported to Windhoek⁴ by

* Subsequent to our discussion with Mr. Visser, in a meeting with the Administrator General we were informed that there would be another unmarked envelope between the ballot and the numbered envelope.

election officials accompanied by UNTAG monitors. All ballots will be counted there, and only there. The ballots will be stored in a vault while voter verification proceeds under the observation of UNTAG and the political parties.

Each registration/identity card will be matched against the duplicate file compiled at the time of registration. Signature and fingerprint experts from the police and Department of Human Resources, as well as from UNTAG, will compare signatures and in the case of illiterate voters, thumb prints (possibly 40% of the over half million voters). Any discrepancy will be taken to Mr. Visser and the UNTAG representative for verification.

An agreed upon bogus vote will result in a search for the envelope and ballot located by the numbers appearing on the registration/identity card. They will then be destroyed. At the completion of the voter verification process all remaining ballots will be removed from the ballot boxes and the envelopes, the envelopes burned and the ballots counted. The results will be announced once the total process is completed, which will take approximately two weeks.

These procedures for voting and challenging ballots are fraught with opportunity for mischief. Additionally, the array of cumbersome procedures anticipated will be presided over by a small pool of civil servants with a South African orientation.

The least that can be said about this situation is that the perception of fairness, if not the reality, will be tested in the extreme.

We therefore conclude:

The laws governing the whole electoral process have been delayed far too long. When the delegation left Namibia, only a week before the scheduled start of the election campaign, not even a draft Election Proclamation had been issued. This has made it impossible for the political parties to commence the kind of organizing and education activities which are an essential part of free and fair elections, particularly for people who have never voted previously.

The proclamation governing the registration process is seriously flawed. This is no ordinary election. It is an election which will determine the future structure of a newly independent nation. The laws that define voter eligibility should limit the vote to those for whom the South West Africa Mandate was established, i.e. bona fide Namibians. Eligibility should not be extended to civil servants or military personnel temporarily seconded to Namibia by South Africa as part of its occupation administration.

Citizens should register and vote in their district of residence or employment. Permitting registration and voting anywhere in the country will make it virtually impossible to check the eligibility of voters - certainly in the absence of a national voters' roll. The challenge provisions therefore become virtually meaningless.

The widely discussed plans for the conduct of voting are even more troubling. The approximately 40% of the electorate that are unable to read and/or write would be able to receive help in marking their ballots only from the government employee who is the chief election official at the polling site. Ballots would be placed in sealed numbered envelopes which could be traced to individual voters. Given South Africa's illegal domination of Namibia and the South African orientation of the civil servants, these provisions, if promulgated into law, would destroy public confidence in the secrecy of the ballot.

The Administrator General stated that a poll commissioned by him showed that 30% of Namibians believe that their upcoming votes would not be secret. Unless this perception is dispelled, the final vote may well not reflect the true wishes of the voters.

The plan to transport all ballots to Windhoek rather than count them at the polling locations is fraught with danger and is

an invitation to fraud. The distances in Namibia are so great and the points of collection are so varied that, in our view, it will be impossible for the UNTAG personnel to keep each box under absolutely continuous, unbroken surveillance along every step of the way. Yet such surveillance would be an absolute prerequisite to maintenance of ballot security.

The proposed validation process in Windhoek staggers the imagination. Separate handwriting and fingerprint experts will visually compare the signatures and the thumbprints. Mr. Visser stated that this matching process would be undertaken with UNTAG representatives and UNTAG experts on hand and with party representatives observing from an upper balcony - presumably watching all of this with binoculars. He estimated that the vote counting in Windhoek would take 12 days (counting from the election day) with no results announced until the completion of that period. That is a delay that is likely to lead to unrest and a lack of faith in the results.

Mr. Visser expects that the matching or validation phase of the vote-counting process will proceed with relative speed. We are skeptical.

We were informed by a former official of the Federal Bureau of Investigation of the United States that, with clear prints, the ordinary visual matching of thumbprints on two separate

documents usually takes several minutes and entails the use of a magnifying glass; the examiner must satisfy himself on the identifying characteristics of the two prints.

This brings to mind the expected size and composition of Namibia's likely electorate. We start with the fact that 40% of Namibia's population is illiterate. If this percentage is the same for the voting electorate and assuming a conservative 500,000 turnout in November, the election officials in Windhoek (and their UNTAG counterparts) would thus have to check 200,000 sets of thumbprints.

And if matching needs to take an average of two minutes per match, the process would take 400,000 minutes, which amounts to over 6,600 hours or over 170 days - assuming a 24-hour workday. And, if only 20% of the electorate were illiterate, this process would take 85 days under the same assumptions. In our view, these figures cast grave doubt on the basic plan for centralized counting in Windhoek, as well as on the practicality and purpose of the validation process which is now being planned by the Namibian authorities.

In other words, if the visual matching is to be a truly serious undertaking, the time for the count could stretch out well beyond the 12 days contemplated by Mr. Visser, with additional confusion and opportunities for tampering.

FARM WORKERS AND "FREE AND FAIR ELECTIONS"

It has been estimated that some 30% of Namibians in the money economy are farm laborers in central and southern Namibia. They are among the poorest and most isolated of all workers.

Their pay is very low: it consists mostly of housing, food, and clothing but very little cash. We have been informed that the money payable to a worker (for the labor of his entire family) may be as little as R10 per month. Farm workers have so few legal rights that they are often treated by their employers as little more than a form of property. It is widely understood that these employers often discipline their laborers by physical punishment and may dismiss them at will, thereby turning them out of their homes to join the growing number of homeless, unemployed Namibians.

In general, farms are so large and the distance from towns so great that farm workers, who rarely have independent means of transport, are virtually isolated from other Namibians except when they are taken somewhere by the farm owners at the latter's convenience.

The rights of private property are often described as absolute in Namibia. They are held to empower farm owners to totally control access to their laborers. No one, we have been

informed, neither relatives or friends of the workers nor even clergy, may enter a farm without the owners' permission.

Nevertheless, we venture to guess that Namibian law, like most other legal systems, makes certain exceptions to an owner's exclusive control of his property by granting access to various authorized persons: e.g., building, fire, and health inspectors, police, and medical or public health personnel, etc.

The Voter Registration Proclamation provides that a mobile registration team can be authorized to enter a farmer's property during daylight hours to register his workers if an order to that effect has been issued by the Chief Registration Officer. We surmise that the Election Proclamation, when it is issued, will similarly empower mobile election teams to enter farmers' property to enable the workers to vote under similar, but special, circumstances. However, no such entry is planned when the farmer transports his workers to the polls.

Consequently we conclude that the rights of private property should not be an insurmountable barrier to the right of access to farm laborers under appropriate circumstances.

We believe that the requirements for free and fair elections set out in paragraph 6 of Resolution 435 mandate reasonable

access to farm workers by both UNTAG and the contesting political parties. We refer particularly to:

- i) the right to participate in the electoral process "without... fear of intimidation from any source" and
- ii) a "fair opportunity" for all parties and persons "to organize and participate in the electoral process. Full freedom of speech, assembly, movement and press shall be guaranteed."

Under international law, affirmed by the International Court of Justice in 1971, Security Council Resolution 435 automatically applies in Namibia, an international territory. Even if South Africa refuses to accept this position, it would nevertheless appear that Resolution 435 is part of the domestic law applicable to Namibia by virtue of Pretoria's agreement to implement the Resolution. Consequently, the cited provisions of the Resolution should be enforceable at law and should, under normal rules of construction, supersede pro tanto any contrary law relating to the rights of private property.

Insofar as intimidation is concerned, it should be self-evident that the workers' very isolation and dependence on farm owners for jobs and home are intimidating. Indeed, in our interview with the AG, he defined one form of intimidation as

that of an employer telling his workers to vote for a specific party or candidate. Farm workers may fear not only to vote against their employer's wishes, express or implied, but even to express political (or other) views contrary to his beliefs.

One observer has suggested that the O'Linn Commission might be able to deal with intimidation of farm laborers under sec. 4(1)(d) of Proclamation AG 11 of 1989, dealing with threats to disadvantaged persons to influence his vote. However, we feel it highly unlikely that isolated farm workers will know about the possibility or will have the means or courage to complain.

We believe that access by UNTAG to all farm workers can lower the level of actual and potential intimidation by providing accurate information about the electoral process, including secrecy of the ballot and the rights of individual workers.

A further practical step would be to arrange government transportation-- with UNTAG monitors, but no employers, present-- to a central polling station from all the farms in a given area rather than taking a mobile polling station to the farms. This would prevent the farm owners from unduly influencing their workers, either directly or by their presence, in the hours immediately before voting.

In addition, it appears to us that the rights referred to above, which are guaranteed in paragraph 6 of Resolution 435, require that party representatives be granted access to farm laborers, both as an aspect of their right to organize and as a facet of the rights of free speech, assembly, and movement. We recognize that the right of access may be subject to reasonable conditions: the party representatives should be properly identified; give adequate notice; and seek access at times that do not unduly disrupt normal life on the farm.

We were repeatedly reminded that a farm owner's home is his castle and that he is free to bar whomever he will. However, it went unnoticed that a farm laborer's home is equally his castle, and that his right to exclude necessarily implies the correlative right to receive. The farm workers do not live in the owner's home. The claimed right of access does not purport to extend to entry by party representatives into the farm owner's actual dwelling place, but merely onto that portion of his land occupied by his worker's homes.

It is possible that the right of access to farm laborers in accordance with paragraph 6 might be analogized to a servitude to implement the law.

CIVIL SERVANTS

The Observer Mission noted with concern the special problems that exist with respect to civil servants and the illiterate populations regarding both the electoral campaign and voting.

There is a draconian prohibition on political participation by civil servants. Although a softer kind of rule is common in other countries, it has a particularly deleterious effect in the special circumstances of Namibia today.

First, this is no ordinary election. This election is the underpinning of the independence process and the exercise of peoples' freely choosing their new government. Secondly, in Namibia, where a very high percentage of the people are employed by the government and where most of the educated Namibians are civil servants, the achievement of meaningful self-determination is placed in jeopardy by the rigorous system being implemented of debarring them from political participation -- they are permitted to attend political meetings but, the Observer Mission was advised by the AG, "urged" to refrain from asking questions. Third, there is some evidence that this rule is selectively enforced to the benefit of certain political parties.

ROLE OF THE U.N.

The entire transition to independence is to take place under the "supervision and control" of the United Nations in that as a condition to the conduct of the electoral process, the elections themselves, and the certification of their results, the United Nations SR will have to satisfy himself at each stage as to the fairness and appropriateness of all measures affecting the political process at all levels of administration before such measures take effect. Further, "the central task" of the SR is to "make sure that conditions are established which will allow a free and fair electoral process." (S/12636)

Resolution 435 further provides that while the AG has "primary responsibility for maintaining law and order through the existing police forces, but the SR must "ensure" their good conduct and "take necessary action to ensure their suitability for continued employment" during this period, including authority to arrange for police monitors. Subject to the provision on the SR's supervision and control, the AG is to administer the electoral process. In case of disputes between the SR and the AG, Resolution 435 gives determinative authority to the SR.

Unfortunately, it has been apparent that throughout the period since 1 April there have been a series of critical issues

in contention, which have thrown into question the functioning in practice of this relationship. These disputes and some final disappointing results from those conflicts have occurred over: the repeal of discriminatory and repressive legislation, including AG 8 (the decree establishing apartheid governmental structures); the scope of the amnesty for returning Namibian exiles; the voter registration law; the continued presence of Koevoet in the police and their use of Casspirs for patrols; the release of political prisoners.

The overall UNTAG posture has not been helped by the U.N. having negotiated a Status Agreement with South Africa which requires all entering UNTAG civilians to apply for a visa from South Africa, an illegal occupant in a territory for which the U.N. has legal responsibility.

A visiting British fact-finding delegation stated publicly their concern that "UNTAG appears to be negotiating with the South Africans instead of supervising the election process." They found, as we found, that people throughout the country wanted the U.N. to take a strong leading position. The British delegation concluded "It is essential that the United Nations not only stands firm but be seen to stand firm."

Thus, the question persists as to whether the SR would ever use his primary instrument of authority, namely refusal to

certify specific arrangements because of their threat to free and fair elections. The UNTAG staff has maintained that this was happening behind the scenes. This assertion has not yet been borne out by the arrangements to date regarding the police and the registration laws.

All of this has led to a widespread public perception that the U.N. is weak and to some demoralization among many people, particularly in the North of the country. This, in turn, has reduced significantly the expectations and faith that a free and fair electoral process is in prospect. This perception persists in spite of the letter of 9 June from the SR to the AG, which was published by the media in the United States and in which the SR himself expresses grave doubts about the impact on the electoral process of the situation in the North. The letter and the SR's statement of 22 June reflect a commendable effort on his part to adopt a firm and assertive stance vis-a-vis the AG. We were heartened, of course, by the SR's letter and his recent public statements on the need for real changes in SWAPOL.

The fact remains, however, that the ultimate weapon of the SR where he is not satisfied with any step is to suspend the process or refuse to certify the results. To assure a free and fair electoral process, it must be clear that he is prepared to take these steps as a last resort. Regardless of infirmities in Resolution 435 and regardless of posturing by the AG, the basic

leverage remains with the SR. The SR emphasized to us that he is determined to exercise the "supervision and control" vested in him by Resolution 435; yet, the full exercise of those powers may well require the use of the suspension authority.

The Observer Mission recognizes the complexity of a decision to delay or to terminate this process that has been the goal of the international community for so many years. Considerations include financial implications, unfulfilled expectations of the Namibian people feeling that the ultimate goal has been thwarted again, the impact on the implementation of the Angola agreement, and the adverse implications for those refugees who have returned home in good faith. But any perceived disinclination to take the ultimate step may in fact cause the greater jeopardy to the rights of the Namibian people and deprive the SR of his chief means of maintaining effective authority.

THE SIGNIFICANCE FOR UNITED STATES ACTION

Clearly the SR is facing a difficult task; and it is not sufficient merely to charge him alone to do more.

Pressure on the AG must be maintained not only by the SR, but also by the Security Council and the international community as a whole. The Observer Mission welcomed the news of the upcoming visit of the Secretary-General as a necessary step in

establishing U.N. support of the SR; we also endorsed strongly the SR's planned trip to the North.

The placing of the administration of the election in the AG and not directly in the U.N. and the placing of initial responsibility for law and order in the AG means that, if there is to be a free and fair electoral process, the overall authority of the SR must be supported. That authority should not be diluted through any negotiations, but rather should be actively buttressed by the whole institution of the U.N. and by those states which have been in the forefront of bringing the illegal occupation of South Africa to an end.

The United States government should speak out on this matter, particularly on the issue of the proposed election laws because the rules of the game may well determine whether there are to be "free and fair" elections. It is better, we submit, to assert a position now on the election plans rather than to sit back and remain silent until after the election is over.

The determination of the international community to have a free and fair electoral process would be underscored by a statement from the United States government on those serious concerns which now bode ill for a free and fair electoral process.