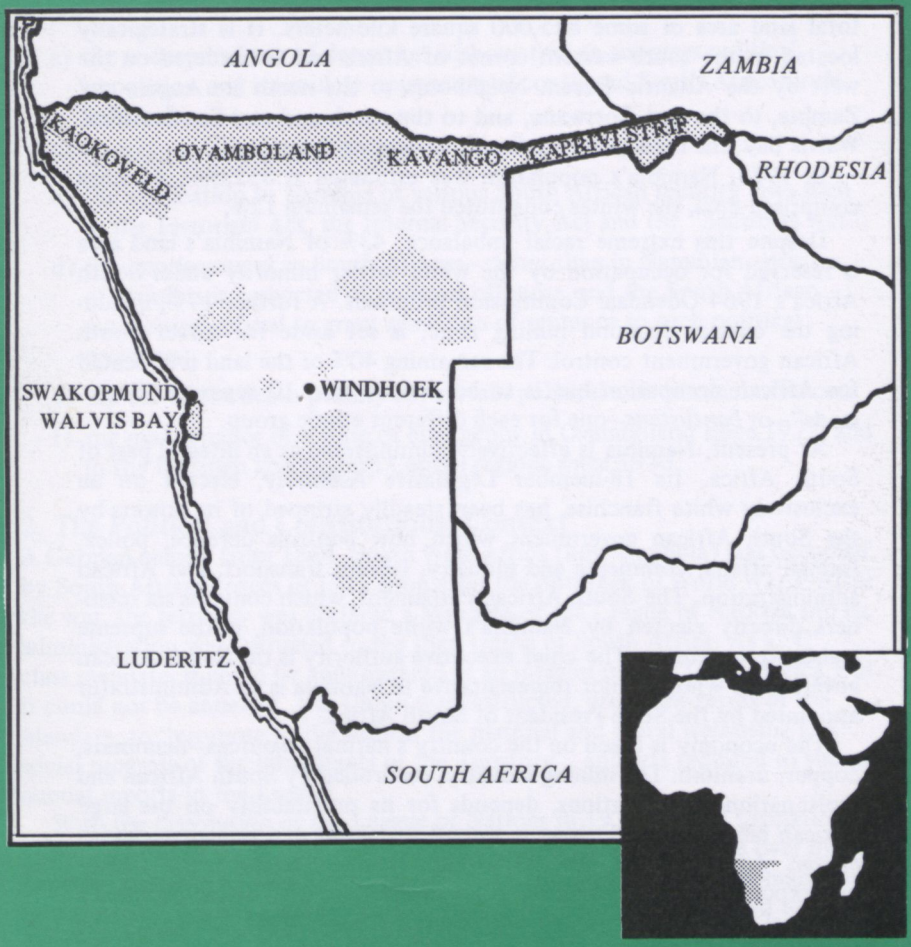
Amnesty International Briefing

NAMIBIA



April 1977

NAMIBIA IN OUTLINE

Formerly known as South West Africa, Namibia was officially renamed in June 1968 by resolution of the United Nations General Assembly. On 27 October 1966, the UN formally assumed direct responsibility for Namibia after unilaterally revoking the Mandate over the territory granted to South Africa by the League of Nations in 1920. However, the UN has so far been unable to translate this formal responsibility into effective control. South Africa refuses to recognize UN authority in Namibia and continues to administer the country.

A relatively large but sparsely populated country, Namibia has a total land area of some 825,000 square kilometers. It is strategically located in the south-western corner of Africa and is bordered on the west by the Atlantic Ocean. Neighbours to the north are Angola and Zambia, to the east Botswana, and to the south and east South Africa. Walvis Bay, the main port, is a South African enclave.

In 1974, Namibia's population was estimated at 852,000. Africans comprised 88%, the whites constituted the remaining 12%.

Despite this extreme racial imbalance, 43% of Namibia's land area is reserved for occupation by the white settler minority under South Africa's 1964 Odendaal Commission proposals. A further 17%, including the coastal diamond mining zone, is set aside for direct South African government control. The remaining 40% of the land is allocated for African occupation but is to be divided into 10 separate "homelands"—or *bantustans*—one for each different ethnic group.

At present, Namibia is effectively administered as an integral part of South Africa. Its 18-member Legislative Assembly, elected on an exclusively white franchise, has been steadily stripped of its powers by the South African government which now controls defence, police, foreign affairs, commerce and industry, labour, transport, and African administration. The South African Parliament, which contains six members directly elected by Namibia's white population, is the supreme legislative authority. The chief executive authority is the South African government whose senior representative in Namibia is an Administrator appointed by the State President of South Africa.

The economy is based on the country's natural resources—diamonds, copper, uranium. The mining industry, controlled by South African and multi-national corporations, depends for its profitability on the large African labour force. Fishing is second to mining as a foreign exchange earner. Agriculture is also important. Namibia is the world's leading exporter of karakul sheep pelts. Besides South Africa, Namibia's principal trade partners are the United States, West Germany, the United Kingdom and Japan.

The African majority, however, has benefitted very little from this wealth and must depend largely on subsistence agriculture and poorly-paid contract labour work.

Namibia

1. Introduction

Amnesty International is particularly concerned about the following issues in Namibia:

a) the widespread use of detention without trial to suppress political opposition and intimidate opponents of continued South African rule in Namibia;

b) the torture of political detainees;

c) the application to Namibia of various South African security laws such as the Terrorism Act, the Internal Security Act and the "Sabotage Act";

d) the imprisonment in South African—rather than in Namibian—prisons of Namibians convicted of political offences, and the South African authorities' refusal to grant remission of sentence to such political prisoners;

e) the use of the death penalty for certain political and criminal offences;

f) the maintenance of a state of emergency in Ovamboland since 1972, and in the Kavango and Eastern Caprivi regions since 1976.

2. The Political and Constitutional Context

A German colony from 1884, South West Africa (now Namibia) was occupied by South African forces in 1915 soon after the outbreak of World War I. After the war, the territory was declared a Mandate of the League of Nations and its administration was entrusted to the then Union of South Africa. As a "C" class mandate, it could be administered as an integral part of South Africa, but it could not be annexed. The Union was instructed, under the terms of the Mandate, to "promote to the utmost the material and moral well-being and social progress of the inhabitants of the Territory", and was required to submit annual reports to the League.

With the dissolution of the League of Nations in 1939 and the formation seven years later of the United Nations, the UN asserted the right to take over the League's supervisory function in regard to the administration of the mandate. South Africa, however, denied United Nations' authority and refused to submit South West Africa to the UN trusteeship system which had been established to replace the former mandate system. Consequently, the UN referred the matter to the International Court of Justice in The Hague for clarification of the constitutional situation. In 1950, the Court advised that the territory need not be

incorporated in the UN trusteeship system but stated that South Africa was obliged to administer South West Africa in accordance with the original mandate and submit annual reports to the UN, as the successor to the League of Nations. South Africa again refused to comply.

Further protracted negotiations also failed to resolve the dispute. In 1960, Ethiopia and Liberia, the two African countries that had been founder-members of the League of Nations, asked the International Court of Justice to order South Africa to observe its obligations to the people of South West Africa and cease all violations of the Mandate. The two petitioners particularly criticized the application of South Africa's *apartheid* policies to South West Africa, contending that such racially discriminatory policies were wholly inconsistent with the terms of the Mandate.

The court issued a majority verdict in response to this request in 1966. It decided that the request lacked legal standing, as mere membership of the League of Nations had not given Ethiopia and Liberia the right to institute an action in respect of the administration of a mandated territory, whatever moral justification there might be for such an action. The court therefore refrained from commenting on the substance of the case, the allegations concerning *apartheid*.

The Court judgement, coming as it did after six years' deliberations, was regarded with disappointment in the UN. It soon galvanized the organization into firmer action. On 27 October 1966, the UN General Assembly unilaterally terminated the mandate granted to South Africa 46 years before and declared that henceforth South West Africa was to be regarded as the direct responsibility of the United Nations. However, South Africa again repudiated UN authority and refused to accept the revocation of the Mandate. South Africa similarly ignored the UN Council for Namibia, the body created in 1967 to arrange the transfer of power in Namibia to the UN, and categorically refused to withdraw from the territory.

In a further advisory opinion delivered in June 1971, the International Court declared South Africa's continued occupation of Namibia to be illegal. The Court also reminded all UN member states of their obligation to refrain from any acts which might imply recognition of the legality of, or lend support to, the illegal South African administration in Namibia.

Following unsuccessful negotiations between the UN Secretary General and the South African government in 1972-73, the UN General Assembly suspended South Africa's membership of the UN for six months in November 1974. Further diplomatic pressure has been coordinated by the UN Council for Namibia, which recognizes the South West Africa People's Organization (SWAPO) as the sole legitimate representative of the Namibian people. The UN has demanded a leading role for SWAPO in the determination of any settlement of the Namibian constitutional issue.

Within Namibia, two countervailing trends have been in evidence since the early 1960s. The South African government has steadily increased its control over the country by assuming direct responsibility for all major functions of state, including defence, police and foreign affairs, and by the application of South Africa's own repressive security laws to quash opposition. South Africa

has also applied its "homelands", or *bantustan*, policy to Namibia in accordance with the recommendations of the Odendaal Commission. This commission, which reported in 1964, proposed the division of Namibia into 11 ethnically and geographically distinct "homelands", each of which would have limited powers of self-government under overall South African supervision. One such homeland comprising 43 per cent of Namibia's total land area was allocated to the white minority population; the other 10 homelands, together comprising no more than 40 per cent of the land, were each reserved for occupation by one of Namibia's "non-white" groups.

The first tribal homeland—Ovamboland—was designated in March 1967. It was provided with a legislative council composed of government-appointed tribal representatives in October 1968. Similar legislative councils were subsequently created in the Kavango and Eastern Caprivi homelands.

With the strengthening of South African power, the period since 1960 has also seen the emergence of a well-organized nationalist movement in Namibia with mass popular support. Despite constant harassment, intimidation, and the detention or imprisonment of many of its leaders, SWAPO, the main nationalist organization, has continued to function and gain support in Namibia. Since 1966, it has possessed a military wing which, operating from exile, has sought to bring about the liberation of Namibia by guerrilla warfare.

Several other nationalist organizations claim significant support in Namibia. The South West Africa National Union (SWANU) led by former political prisoner Gerson Veii, advocates policies similar to those of SWAPO and has a mainly Herero following. The National Convention, a coalition of minor political parties, also has considerable support among the Herero as its most prominent leader is Herero Chief Clemens Kapuuo. Chief Kapuuo opposes SWAPO, which he believes to be Ovambo-dominated, and is currently engaged in Namibian independence negotiations initiated by the South African government.

The strength of nationalist feeling has been demonstrated on several occasions in recent years. In 1971-72, a prolonged general strike by African contract workers following South Africa's rejection of the 1971 International Court judgement brought the mining industry to a complete halt and led the South African authorities to impose a state of emergency in Ovamboland which, in March 1977, has still not been lifted. In August 1973, SWAPO organized a boycott of the Ovamboland legislative council elections with spectacular success. Only 2.3 per cent of the electorate turned out to vote. In 1974, several thousand Namibians crossed the border into Angola to join the military wing of SWAPO following a wave of repression organized by government-appointed tribal chiefs in Ovamboland.

Faced with mounting internal and external pressure to withdraw, especially since the removal of Portuguese power from Angola, South Africa has attempted to secure an internal settlement of the Namibian issue which will leave the country, after independence, heavily dependent upon South Africa. Since September 1975, a multi-racial constitutional conference has been in progress at the Turnhalle in Windhoek. Organized on an ethnic rather than a democratic basis, the conference is attended by government-appointed tribal representatives. They include National Convention leader Clemens Kapuuo, who attends in his

capacity as hereditary chief of the Herero tribal group. The white minority population is represented at the talks by a delegation from the ruling National Party. Having first been excluded, as is the case with all black political organizations, from participating in the conference, SWAPO has since decided that it will anyway boycott the talks. So far, the Turnhalle delegates have decided that Namibia shall become independent on 1 January 1978 and that the interim government should be formed from among the conference participants as soon as possible during 1977. However, as the Turnhalle negotiations have been denounced both by the United Nations and the Organization of African Unity, there seems little likelihood that such a government would receive wide international recognition, or that any lasting Namibian settlement could be achieved without the participation of SWAPO.

3. The Legal Situation

The South African administration in Namibia has been regarded internationally as an illegal regime since the revocation of the Mandate in October 1966. Nevertheless, South Africa continues to exercise full legislative, executive and judicial functions in Namibia.

(i) Legislation under which prisoners are held

Many of South Africa's own security laws have been extended to Namibia where they are used to detain or imprison Namibians opposed to *apartheid* and continued South African rule. Two laws in particular–both introduced since the termination of the Mandate–are employed for this purpose.

(a) Terrorism Act, No. 83 of 1967- First introduced in the South African Parliament in 1967, the Terrorism Act was made retroactive to 1962 in order to facilitate the prosecution of Namibian nationalist leader Toivo Hermann ja Toivo and 36 other Namibians then detained without charge in South Africa's administrative capital, Pretoria.

Under the provisions of the act, the offence of "terrorism" is defined in very broad terms as any activity likely "to endanger the maintenance of law and order" in South Africa and Namibia. Activities deemed likely to come within this category include, among others, those which might result in embarrassment to "the administration of the affairs of the State", obstruction to the "free movement of any traffic", "hostility between the white and other inhabitants of the Republic", "substantial loss to any person or the State", or prejudice to "any industry or undertaking". Such activities might be committed within South Africa or Namibia, or they might be committed abroad. It was also made a "terrorist" offence to "further or encourage the achievement of any political aim", or social or economic change, whether by force or by cooperation of any kind with foreign governments or with international bodies, for example the United Nations.

People who engage in activities which may have as their consequence any of the results listed above may under the act be adjudged to have committed the offence of participation in terrorist activities. In so doing, they are

presumed to have acted with intent unless they can demonstrate beyond "reasonable doubt" that they did not intend their actions to have any of the listed results. In other words, the onus of proof is placed upon the accused to show the innocence of their intentions rather than on the state to prove their guilt.

The Terrorism Act contains certain other features which add to its far-reaching and severe effect and explain why it is widely regarded as the most Draconian of all South Africa's security laws. Section 6 of the Act provides for the detention without charge for an indefinite period of any person suspected of terrorism, as defined, or of possessing information relating to terrorism. Detainees are held incommunicado until they have "satisfactorily" answered all questions put to them by their interrogators. No court of law may pronounce upon the validity of any detention or order the release of any detainee.

Trials under the Terrorism Act are always conducted on a summary basis. This generally works to the disadvantage of defendants, for defence counsel are kept in ignorance of the precise nature and direction of a state case until the actual commencement of the trial. Consequently, less time is available for the preparation of an adequate defence case and repeated adjournments are required after each state witness has testified to enable defence lawyers to prepare their cross-examination. In this way trials become unnecessarily prolonged.

Conviction under the Terrorism Act carries a mandatory minimum sentence of 5 years' imprisonment. The maximum sentence under the Act is death.

(b) Proclamation No. R. 17 of 1972–Introduced at a time of civil unrest following the general strike of Ovambo contract workers in December 1971 and their subsequent repatriation *en masse* to Ovamboland, Proclamation R.17 was issued by South Africa's State President on 4 February 1972.

Under the terms of the Proclamation, a virtual state of emergency was declared throughout Ovamboland. The authorities were given wide powers to control entry into and departure from Ovamboland, to prohibit all public meetings of six or more persons, and to prohibit any person from holding, attending or addressing any meeting. At the same time, it was made an offence punishable by up to 3 years' imprisonment for any person to make statements "likely to have the effect of subverting or interfering with the authority of the state", the Ovamboland territorial authority or any officials of state. Similar penalties were prescribed for participation in any boycott or for refusing or neglecting to obey any lawful order issued by a chief or headman. It was made an offence too for any person to treat a chief or headman with "disrespect, contempt or ridicule", or to fail to show "that respect and obedience" due to a chief or headman according to "native law and custom".

Proclamation R.17 provides the authorities with powers of arbitrary arrest and detention without trial. Under Section 19, native commissioners

and officers of the South African police may arrest without warrant any person suspected of an offence against the regulations. Such detainees may be held for an indefinite period and until they have answered "fully and truthfully" all questions put to them by their interrogators. They may be held at any place deemed "suitable for the purpose" by the arresting officer and may not be allowed to consult a lawyer without the express consent of the South African Minister of Bantu Administration and Development. In practice, most detainees are held incommunicado; they are denied access to relatives as well as legal representatives.

Proclamation R.17 authorizes chiefs and headmen to try cases involving certain contraventions of the regulations alleged to have taken place within their own jurisdiction. For example, people accused of showing disrespect to a chief would have their cases tried by that chief, who would in effect act as both prosecutor and judge.

The state and all its officials are indemnified against civil or criminal prosecution for actions undertaken while the proclamation has effect. Section 15 expressly forbids civil lawsuits of any kind, while section 16 prohibits criminal prosecution for acts committed "in good faith". In cases of doubt, the onus of proof is placed on the complainant to show that a particular act was not committed "in good faith", rather than on the accused person to show that it was.

Although it is now more than five years since the end of the Ovambo workers' strike, Proclamation R.17 has still not been revoked. Instead, in May 1976, it was extended to cover the Kavango and Eastern Caprivi areas so that they, like Ovamboland, now remain under a state of emergency.

Two additional and far-reaching laws have so far been used only on a limited scale in Namibia. The "Sabotage Act"—Section 21 of the General Law Amendment Act, No. 76 of 1962—was applied to Namibia with retroactive effect in 1966. Similar in content but somewhat narrower in scope than the later Terrorism Act, it created the broadly-defined offence of "sabotage". It has now been largely superseded by the Terrorism Act but in 1973-74 it provided the basis for the prosecution and imprisonment in six SWAPO Youth League leaders.

The Internal Security Act was introduced in 1976 to amend and broaden the scope of the earlier Suppression of Communism Act. It provides for the use of preventive detention for an indefinite period and for the "banning" of any person considered by the South African Minister of Justice to have engaged "in activities which endanger or are calculated to endanger the maintenance of public order". "Banning orders" are normally imposed for a 5 year period but are renewable upon expiry. They subject a person to a number of restrictions including partial house arrest and restrictions on freedom of assembly, movement and expression.

(ii) Legal/administrative detention procedures

(a) The Judiciary –The Namibian judiciary is fully integrated with the South African judiciary. It consists of a Supreme Court, itself a division of the Supreme Court of South Africa, and inferior or magistrates' courts.

The magistrates' courts have jurisdiction over all cases except those involving capital offences such as murder or terrorism. The Supreme Court takes all such serious cases and hears cases on appeal from the magistrates' courts. Cases on appeal from the Supreme Court are referred to the Appellate Division of the South African Supreme Court which sits in Bloemfontein.

Namibia's judges and magistrates, and indeed most attorneys and advocates, are members of the territory's white settler community.

(b) Arrest process–Several laws provide for detention without charge or trial. The General Law Amendment Act of 1966 empowers senior police officers to arrest without warrant any person suspected of possessing information relating to terrorism or sabotage, as these offences are defined. In the first instance, detainees may be held for up to 14 days for interrogation purposes. However, this period may be extended at the discretion of a Supreme Court judge.

Section 6 of the Terrorism Act authorizes any police officer of or above the rank of lieutenant colonel to order the arrest without warrant of any person suspected of being a terrorist or of possessing information relating to terrorists or terrorist offences. In this case, the detained person is held incommunicado until such time as the commissioner of police is satisfied that the detainee has adequately answered all questions put by the interrogators.

In the areas affected by Proclamation R.17, people may be detained without charge for an indefinite period if they are believed to have information about any crime, committed or intended, under any law. Arrests may be effected by any police officer. As under the Terrorism Act, people detained in this way under regulations 19 and 21 of Proclamation R.17 are denied visits of any kind.

More recently, provision has been made for the use of indefinite preventive detention under Section 10 of the Internal Security Act.

In practice, the South African authorities use their extensive powers of arbitrary arrest and detention to harass and intimidate opponents of *apartheid* and white minority rule both in Namibia and South Africa. By far the majority of all detainees are eventually released uncharged, although they may have been subjected to many months of detention incommunicado and in solitary confinement. Before being charged, Toivo Hermann ja Toivo and several of the other Namibians who went on trial under the Terrorism Act in 1967 were detained incommunicado for more than a year. David Meroro, SWAPO National Chairman in Namibia, was similarly detained for more than 4 months in 1974 before being charged and brought to court.

(c) Access to Lawyers–Persons detained indefinitely, either under the provisions of the Terrorism Act or Proclamation R.17, are held incommunicado. Access is denied both to detainees' relatives and legal representatives. When circumstances permit, however, detainees held under

the Terrorism Act may be visited in private by a magistrate at least once every two weeks. But, as magistrates are invariably regarded as government officials, this would seem to be an empty gesture designed more to provide an air of respectability to security police interrogation methods than to protect detainees from intimidation and physical abuse.

(d) Conduct of trials–In the Supreme Court, defendants are normally tried before a judge sitting alone or with assessors and in the inferior courts by a magistrate. All judges and magistrates are white. There is no provision for trial by jury.

Official court languages are English and Afrikaans. Interpreters must therefore be employed in trials involving one or other of Namibia's indigenous languages. In such cases, disputes frequently arise concerning the interpretation of particular concepts and terms.

Political trials are normally conducted summarily, that is, with no preliminary examination before a magistrate to establish a *prima facie* case. Such trials may be held anywhere in South Africa or Namibia. They need not be held in the area in which the offence is alleged to have been committed. Thus, for example, the trial of the 37 Namibians charged under the Terrorism Act in 1967 was convened in Pretoria, not in Namibia where the alleged offences were committed.

The Pretoria trial contained two particularly disturbing features. It was a mass trial in which the evidence of certain defendants could have prejudiced the defence cases of their co-accused. In addition, throughout the trial, reference to individual defendants was made not by name but according to their number in the charge sheet.

Other causes for concern were best illustrated by the trial at Swakopmund in 1976 of six Namibians charged under the Terrorism Act following the assassination of Ovamboland Chief Minister Filemon Elifas in August 1975. None of the accused were charged with direct participation in the assassination, yet two were ultimately sentenced to death.

Several people called as state witnesses, during the course of this trial, had been detained continuously for more than five months before they gave evidence. As is customary, such witnesses were warned at the commencement of their evidence that they themselves would be granted immunity from prosecution if their testimony were considered satisfactory by the court. However, two witnesses refused to testify for the state and alleged that they had been tortured and forced to sign false statements while in detention. Both men–Victor Nkandi and Axel Johannes–were thereupon treated as recalcitrant witnesses by the trial judge and each sentenced to one year's imprisonment.

After the conclusion of this trial in May 1976, it was learnt that vital defence documents had been "leaked" to South African security police by three employees of the defence attorneys while the trial was actually in progress. Subsequently, an appeal was lodged with the South African Appeal Court in Bloemfontein.

It is factors just such as these–the use by the security police of their

detention powers to intimidate witnesses and their ability to disrupt defence evidence–which indicate how one-sided the dispensation of justice in Namibia has become. The system affords a defendant little or no protection from arbitrary detention, torture, intimidation or other indignities and at the same time removes from the state the onus of proof. The courts appear merely to furnish an air of judicial respectability to this repressive and politically weighted system. Even so, the South African authorities have still found it desirable to limit a judge's discretion when sentencing people convicted under the Terrorism Act by instituting a mandatory minimum sentence of 5 years' imprisonment.

(e) Release process–Detainees held under Section 6 of the Terrorism Act may be released at any time on the instructions of the Minister of Justice. Alternatively, they may be freed when they have answered all questions put to them by their interrogators to the satisfaction of the commissioner of police.

People held under Section 19 of Proclamation R.17 may be detained until they too are considered to have "answered fully and truthfully all questions" put by the interrogating officers. Such detainees may also be released upon conditions determined by the Minister of Justice. Contravention of such conditions constitutes an offence.

No remission of sentence is permitted to convicted political prisoners in South Africa and Namibia, although convicted criminal offenders can and do receive up to one third remission of sentence. Nor is the time spent in detention and awaiting trial deducted from the period of sentence imposed.

Political prisoners sentenced to life imprisonment–and there are 16 Namibians who fall within this category–must serve for the duration of their natural lives.

4. Number and Analysis of Prisoners

Namibia's political prisoners do not share a common background. Drawn from disparate ethnic and occupational groups, they, include among others, Ovambos, Hereros, Caprivians, teachers, contract labourers, peasant farmers, and clergy. However, most political prisoners, whether they be uncharged detainees or convicted political offenders, are supporters of the main nationalist organization, SWAPO, although members of similar political organizations such as The South West Africa National Union (SWANU) and the Namibia National Convention (NNC) have also been imprisoned in the past.

For the purposes of this briefing, two main categories of political prisoner may be identified:

a) Convicted political prisoners: those charged, tried and sentenced for political offences of both a violent and non-violent nature. Altogether, a total of 44 Namibians were known to be serving sentences imposed for political offences at the end of 1976. With two exceptions, they are all imprisoned in South Africa despite their Namibian nationality and the fact that they were convicted of offences committed in Namibia.

Since the mid-1960s, there has been a succession of political trials involving Namibians. In September 1967, 37 Namibians went on trial in Pretoria charged under the retroactive provisions of the Terrorism Act. All but two of them were convicted in February 1968. The trial judge imposed 20 sentences of life imprisonment although five of these were subsequently reduced to 20 years' by the South African Appeal Court. The remaining prisoners received sentences ranging from 5-20 years.

A further six prisoners were convicted under the Act–at a trial which ended in Windhoek in July 1969. They too were sentenced to life imprisonment but, again, the Appeal Court is reported to have reduced five of these sentences to 20 years.

In 1973, three SWAPO Youth League leaders were each convicted under the Sabotage Act and sentenced to 8 years' imprisonment. In 1974, a 6-year-sentence was imposed on a fourth SWAPO Youth League official. Two other Youth League leaders, Ezriel Taapopi and Josef Kashea, were jailed for 2 years under the Sabotage Act in July 1974. They were released in 1976.

In early 1976, six SWAPO supporters stood trial in Swakopmund on charges under the Terrorism Act. Four of the defendants–two women and two men– were convicted. The women were sentenced to terms of 5 and 7 years' imprisonment. The men–Hendrik Shikongo and Aaron Muchimba–were each sentenced to death. At the end of 1976, they were reported held at Pretoria Central Prison pending the outcome of their appeal against conviction and sentence.

Two detainees called as state witnesses during the Swakopmund trial were each jailed for one year when they alleged torture and refused to testify against the defendants. Both men–Victor Nkandi and Axel Johannes–are due for release in March 1977.

Curiously, in view of the general intensification of guerrilla warfare in northern Namibia since the conclusion of the Angolan civil war in early 1976, few trials involving captured guerrilla fighters have taken place. This would suggest that captured guerrillas are either subjected to indefinite detention or are tried in secret.

b) Political detainees: those held for indefinite detention without charge under the terms of the Terrorism Act, Proclamation R.17 or similar security legislation.

It is impossible at any one time to provide an accurate estimate of the total number of political detainees held in Namibia. The authorities neither publish detainees' names nor inform their families of their arrest, and most detainees are of course held incommunicado. However, it is known that a total of 303 people were detained in Ovamboland under Proclamation R.17 alone during 1972. Of these, only 128 were eventually charged and convicted. Further waves of arrests occurred in 1974, when many SWAPO Youth League supporters were detained, and in late 1975 when more than 200 members of SWAPO and the NNC were detained following the assassination of Ovamboland Chief Minister Filemon Elifas.

5. Location of Prisons

Most Namibians imprisoned for political offences are held in South Africa's

main political prison on Robben Island. A former leper colony and longtime place of imprisonment, the notorious "Island" is situated in Table Bay off Cape Town.

Other South African prisons are also used for Namibian political prisoners at the present time. Rauna Nambinga and Anna Nghihondjwa, two women convicted during the Swakopmund Terrorism Act trial in 1976, are held at Kroonstad Prison in South Africa's Orange Free State province. The two men sentenced to death, Hendrik Shikongo and Aaron Muchimba, during the same trial now await the outcome of their appeal, and perhaps ultimate execution, in Pretoria Central Prison.

Apart from detainees, the only political prisoners held in Namibia are two SWAPO supporters who were jailed in March 1976 after refusing to testify as state witnesses at the Swakopmund trial. They remain in custody at Windhoek Prison.

The practice of imprisoning Namibian political prisoners in South Africa rather than Namibia has evoked much adverse comment at an international level. Consequently, the South African authorities are now reported to be enlarging Windhoek Prison in readiness for the arrival of some at least of the Namibians currently held on Robben Island.

6. Prison Conditions

Namibian political prisoners are subjected to particularly harsh treatment by the South African authorities. Upon conviction, they are classified on a racial basis and then removed from Namibia to maximum security prisons located in South Africa. Male prisoners are sent to Robben Island; female prisoners are held at Kroonstad Prison. Prisoners under sentence of death are placed in the condemned cell section of Pretoria Central Prison.

Being held so far from their homes, few Namibian prisoners receive more than one annual visit from their families, most of whom live in Ovamboland more than 1,500 kilometers from Robben Island or Kroonstad. Even then, however, contact visits are not allowed. Prisoners and their relatives must communicate through a glass screen and by telephone.

Amnesty International considers the imprisonment of Namibian political prisoners in South Africa to be excessively harsh, not just because of the difficulties of visits but because the aim of this policy appears to be an attempt to deny the Namibians their very national identity.

All prisoners in South Africa, political and criminal offenders alike, are graded upon entry into prison according to their social, political or criminal background. The grades–A to D–stipulate the kind of food, clothing and cell equipment to be supplied and what privileges are to be allowed. Initially, at least, most political prisoners are given D category status, the lowest of the four grades and the one usually reserved for habitual criminal offenders, although they may subsequently be upgraded to C or, more rarely, B status.

Political prisoners on Robben Island receive a diet consisting largely of maize-meal porridge, to which is added small quantities of meat or fish, fruit or vegetables. They are given sisal sleeping mats and blankets as bedding. Each prisoner is allowed to send and receive one letter a month, or two letters in

months when they do not receive the half-hour visit allocated under prison regulations. Mail is strictly censored as the authorities attempt to prevent prisoners receiving political news of any kind. No newsapers or radios are allowed.

Permission to study is granted to prisoners not as a right but as a privilege which may be withdrawn for any slight misdemeanour. More serious breaches of discipline are punished with solitary confinement and a reduced diet.

All prisoners spend much of their time engaged in manual labour–stone-breaking in the prison's lime quarry, collecting seaweed along the shore or working in the carpentry shops reported to have been installed in recent years. As a result of this, the poor diet and the cold, inhospitable climate prevailing at Robben Island, many prisoners are known to suffer from recurrent ill health.

As no remission of sentence is granted to political prisoners in South Africa, many of the 38 Namibians currently held on Robben Island may expect to die in prison. Sixteen of them were sentenced to life imprisonment. Sixteen others, including Ndjaula Tshaningua, now more than 80 years old, are serving 20 year sentences.

7. Torture Allegations

Consistent reports received over a period of years indicate that the use of torture is institutionalized in Namibia. It is employed almost on a routine basis by security police during the interrogation of political detainees, both to extract "confession" statements and to elicit information relating to their political activities. Similarly, South African military forces operating in northern Namibia reportedly use torture on an extensive scale in order to gather information about the movements of nationalist guerrillas and generally to intimidate the local civilian population on whom the guerrillas depend. In August 1976, a former South African soldier alleged that his battalion alone had been responsible for the systematic torture of some 200 African civilians detained during one security sweep in Ovamboland in June 1976.

Many Namibian political prisoners have alleged torture during interrogation. Before being brought to trial under the Terrorism Act in 1968, Toivo Hermann ja Toivo and his 36 co-defendants are reported to have been subjected to repeated physical assault and electric shock torture while detained by South African security police in Pretoria. In April 1973, Lutheran Church leaders from Namibia presented the South African Prime Minister with details of 37 Africans known to have been tortured in Ovamboland in 1972. The following year, several SWAPO Youth League leaders complained in court that prolonged solitary confinement had left them confused and mentally disorientated. More recently, allegations of torture were made by several Namibians detained following the assassination of Chief Filemon Elifas in August 1975. Two such detainees, Axel Johannes and Victor Nkandi, when called as state witnesses at the Swakopmund Terrorism Act trial in March 1976, refused to testify on the grounds that they had been intimidated and assaulted by security police. They were each sentenced to one year's imprisonment for contempt of court.

Various methods of torture have been alleged. They include sleep deprivation, the application of electric shocks, severe beating on the body with fists and sticks, and burning with cigarettes. In addition, torture victims have been hanged by the

wrists and ankles for long periods; they have been immersed head first in barrels of water until unconscious; and they have been subjected to blindfolding, manacling and assassination threats.

During 1973-74, more than 300 supporters of SWAPO and another political organization, the Democratic Development Co-operative Party, were flogged publicly on the orders of pro-government Ovamboland tribal chiefs. The floggings were administered summarily and without fair judicial hearing. The instrument used, the firm central rib of the *makalani* palm branch, caused severe pain and bleeding to the victims, some of whom required hospital treatment after the flogging.

Despite a storm of international protest, the South African government refused to intervene and prevent the floggings on the grounds that they were permitted by "tribal custom"–a claim strongly disputed by Ovambo elders and anthropologists. However, in February 1975, the South African Appeal Court prohibited the infliction of any further floggings after hearing an action brought against the tribal authorities by two Namibian bishops and one of the victims of the floggings.

The South African government's attitude to the floggings is typical of its attitude to the use of torture in general. South Africa has consistently rejected calls for independent inquiries into torture allegations, prefering to take the line that such allegations are totally unfounded. Thus, five months after reporting 37 cases of torture to the South African Prime Minister in April 1973, Namibian church leaders were informed officially that all the allegations they had submitted were groundless.

Several South African security laws provide opportunity for abuse. Detainees may be held incommunicado for an indefinite period under both the Terrorism Act and Proclamation R.17, and the latter regulation also contains a specific indemnity for any acts committed "in good faith" by South African government personnel. Under the Defence Amendment Act of 1976, all members of the South African armed forces were similarly indemnified against civil or criminal prosecution for acts committed "in connection with... ... ... internal disorder or other emergency".

8. Capital Punishment

The death penalty is imposed on a mandatory basis for the crime of murder, except where extenuating circumstances apply. It may also be imposed on a non-mandatory basis for other criminal offences such as rape or aggravated armed robbery.

Together with treason, certain political offences may also incur the death penalty. The Internal Security Act (formerly the Suppression of Communism Act) makes it a capital offence for any person to undergo, or encourage others to undergo, any form of "training" in order to achieve any of the objectives of communism, as defined in the Act. The Act further provides for a possible death penalty in cases where a past or present resident of South Africa or Namibia is convicted of having advocated, while abroad, foreign intervention to effect change or the achievement of the objectives of communism.

The Sabotage and Terrorism Acts also make provision for the use of a possible

death penalty against people convicted of sabotage and terrorism respectively, as these offences are defined in the two acts.

In cases where a death sentence is passed and upheld upon appeal, a report is sent to the State President of South Africa who may then make a recommendation for clemency. At the same time, a report is also passed to the Department of Justice for scrutiny and for a decision as to whether an execution should take place. Executions are authorized by the South African Minister of Justice and are carried out at Pretoria Central Prison. It is not unusual for several people to be hanged at the same time.

In practice, only two Namibians are known to have been sentenced to death for explicitly political offences, although many others have been executed for non-political crimes. Hendrik Shikongo and Aaron Muchimba, both SWAPO supporters, were sentenced to death under the Terrorism Act in May 1976 at the conclusion of their trial in Swakopmund. An appeal against conviction and sentence was in progress during February 1977.

A further death sentence was passed in September 1976 when Filemon Nangolo, an alleged member of SWAPO's guerilla forces, was convicted of four murders. Nangolo was refused leave to appeal in October 1976.

9. Action by Amnesty International

Amnesty International has worked for the release of prisoners of conscience in Namibia since the first mass political arrests took place in the mid-1960s. During this period, Amnesty International has sought repeatedly to draw attention to widespread violations of human rights in Namibia. In statements to the United Nations, Amnesty International has particularly criticized the detention provisions of the Ovamboland emergency regulations and other security laws such as the Terrorism Act and has condemned the use of torture by the South African authorities in Namibia. In 1974, Amnesty International published a dossier containing affidavits prepared by victims of the Ovamboland floggings which later formed the basis of a Communication to the United Nations' Human Rights Commission concerning "a consistent pattern of gross and reliably attested violations of human rights perpetrated by the government of South Africa upon inhabitants of Namibia".

In 1974, an Amnesty International observer attended the trial in Windhoek of two SWAPO Youth League leaders, Ezriel Taapopi and Josef Kashea. An Amnesty International observer also attended part of the Swakopmund Terrorism Act trial in March 1976. Amnesty International protested at the two death sentences imposed at the conclusion of this latter trial.

At the present time, Amnesty International groups are working on nine adoption cases and six investigation cases.

These papers are intended to summarize available information on political imprisonment, torture and the death penalty in a single country or territory governed by a specific political authority. They are designed to be concise and factual and are written primarily for reference purposes.

Since Amnesty International is limited by its statute to act only in specific human rights situations, reference is made to the political, economic and social situation in each country *only where this has direct relevance to particular human rights problems.* The information contained in each paper is accurate at the time of publication.

Amnesty International Publications

Report of an Inquiry into Allegations of Ill-Treatment in Northern Ireland, A4, 48 pages, March 1972: 75 pence (US $1.85).
Report on Allegations of Torture in Brazil, A5, 108 pages, first edition September 1972, re-set with updated preface March 1976: £1.20 (US $3.00).
Political Prisoners in South Vietnam, A4, 36 pages, July 1973: 35 pence (US $0.90).
A Chronicle of Current Events (Journal of the Human Rights Movement in the USSR), numbers 17, 18, 21, 24, 27 published individually: 65 pence (US $1.60); double volumes 19-20, 22-23, 25-26: 85 pence (US $2.10); numbers 28-31 in one volume: 95 pence (US $2.50); numbers 32-33, one volume, £1.95 (US $4.95).
Amnesty International Report on Torture, 246 pages. First published December 1973, second (updated) edition January 1975: £1.50 (US $3.75).
Chile: an Amnesty International Report, A5, 80 pages in English, 88 pages Spanish, September 1974: 85 pence (US $2.10).
Short Report on Prison Conditions in West Bengal Jails, A4, 16 pages, September 1974.
Report of an Amnesty International Mission to Israel and the Syrian Arab Republic to Investigate Allegations of Ill-Treatment and Torture, A5, 34 pages, April 1975: 50 pence (US $1.25).
Workshop on Human Rights: Report and Recommendations, A5, 15 pages, April 1975, issued by the Amnesty International Campaign for the Abolition of Torture.
Report of an Amnesty International Mission to Spain, A5, 24 pages in English, 28 pages Spanish, September 1975: 35 pence (US $0.90).
Prisoners of Conscience in the USSR: Their Treatment and Conditions, A5, 154 pages, November 1975: £1.00 (US $2.50).
AI in Quotes, A5, 24 pages, May 1976: 25 pence (US $0.50).
Amnesty International 1961-1976: A chronology, May 1976: 20 pence (US $0.40).
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Report of an Amnesty International Mission to Sri Lanka, A4, 52 pages, second edition December 1976: 75 pence (US $1,25).
Professional Codes of Ethics, A5, 32 pages, October 1976: 40 pence (US $1.00).

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AMNESTY INTERNATIONAL is a worldwide human rights movement which is independent of any government, political faction, ideology, economic interest or religious creed. It works for the release of men and women imprisoned anywhere for their beliefs, colour, ethnic origin, language or religion, provided they have neither used nor advocated violence. These are termed "prisoners of conscience".

AMNESTY INTERNATIONAL opposes torture and the death penalty in all cases and without reservation. It advocates fair and early trials for all political prisoners and works on behalf of persons detained without charge or without trial and those detained after expiry of their sentences.

AMNESTY INTERNATIONAL seeks observance throughout the world of the United Nations Universal Declaration of Human Rights and the UN Standard Minimum Rules for the Treatment of Prisoners.

AMNESTY INTERNATIONAL has 1,665 adoption groups and national sections in 33 countries in Africa, Asia, Europe, the Middle East, North America and Latin America and individual members in 78 countries. Each adoption group works for three prisoners of conscience in countries other than its own. The three countries are balanced geographically and politically to ensure impartiality. Information about prisoners and human rights violations emanates from Amnesty International's Research Department in London.

AMNESTY INTERNATIONAL has consultative status with the United Nations (ECOSOC), UNESCO and the Council of Europe, has cooperative relations with the Inter-American Commission on Human Rights of the Organization of American States, and has observer status with the Organization of African Unity (Bureau for the Placement and Education of African Refugees).

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