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CONTENTS

	<u>Page</u>
I. BACKGROUND TO THE PRESENT SITUATION IN NAMIBIA	
A. Basic information on the Territory	3-4
B. Brief historical outline	4-6
C. Odendaal Plan and South Africa's policy of fragmentation	6-7
D. Opposition to the homelands policy	7-8
E. <u>Apartheid</u> in Namibia	8-11
F. Economic exploitation	12-14
G. Labour conditions	15-16
H. Repressive legislation	16-20
I. Growth of the national liberation struggle	20-23
J. Detention and trial of nationalists	23-25
K. Other acts of repression	25-27
L. Turnhalle constitutional conference/at Windhoek	27-29
M. Diplomatic undertakings by the Western Powers	30-31
N. Recent developments	32-33
II. HISTORY OF THE RELATIONS BETWEEN THE UNITED NATIONS AND SOUTH AFRICA CONCERNING NAMIBIA	
A. Developments prior to the termination of the Mandate, 1946-1966	34-37
B. Developments following the termination of the Mandate, 1966-1977	37-44

5

ANNEXES:

Page

Annex I:	Text of General Assembly resolution 2145 (XXI) .	45
Annex II:	Text of General Assembly resolution 2248 (S-V) .	46-47
Annex III:	Text of Security Council resolution 269 (1969) .	48
Annex IV:	Text of Security Council resolution 276 (1970) .	49
Annex V:	Text of Security Council resolution 283 (1970) .	50-51
Annex VI:	Text of Security Council resolution 301 (1971) .	52-53
Annex VII:	Text of Security Council resolution 385 (1976) .	54
Annex VIII:	Text of General Assembly resolution 32/9.D	55-60
Annex IX:	Decree No. 1 for the Protection of the Natural Resources of Namibia	61-62
Annex X:	Extracts from the Advisory Opinion of the International Court of Justice concerning Namibia	63-65

APPENDICES:

Appendix I:	Table showing selected list of Foreign Companies operating in Namibia	66-69
Appendix II:	SWAPO Central Committee Declaration of September 1977	70-72
Map of Namibia		

I. BACKGROUND TO THE PRESENT SITUATION IN NAMIBIA

A. BASIC INFORMATION ON THE TERRITORY 1/

Namibia 2/ lies alongside the South Atlantic coast of Africa and borders on South Africa, Botswana, Angola and Zambia. It covers an area of 318,261 square miles (824,269 square kilometres), approximately the size of France and Britain put together, but its population according to official 1974 South African estimates numbered only about 852,000, one of the lowest population densities in Africa. Of these, 753,000 were classified as "non-whites" and 99,000 as "whites". The former are in turn subdivided into various groups according to South Africa's policy of subdividing the non-white, but not the white, population, into tribal or ethnic subgroups. 3/ The largest black group are the Ovambos (396,000) followed by the Damaras, Hereros, Kavangos, Namas, East Caprivians, Bushmen, Kaokovelders and Tswanas (numbering variously from 75,000 to 5,000). There are, in addition, about 32,000 Coloureds (of mixed descent and of relatively recent arrival in the Territory) and 19,000 Rehoboth Basters who are descendants of a Coloured group from South Africa which settled in the Rehoboth area - south of Windhoek - a century ago and formed a semi-autonomous community.

Economically the Territory is rich in natural resources: diamonds, found mainly in the coastal desert and coastal waters; copper, lead, zinc, vanadium and uranium; its rich off-shore fisheries; and its karakul industry. All of these resources and industries are white-owned and, in the case of minerals and fishing, are dominated by large South African or international companies. Namibia is one of the world's largest producers of diamonds; in recent years there has been extensive development of copper and exploration of uranium and prospecting for petroleum has been intensified. Almost all of these economic activities are located in the area reserved for white settlement.

1/ It is necessary for information purposes to refer throughout this paper to some terms commonly used by South Africans, such as "homelands" and "bantustans", as well as to legislation, parts of the governmental structure and to the titles of various members of the illegal minority régime in Namibia. The use of such terms without quotation marks does not in any way imply recognition by the United Nations of the illegal régime.

2/ The name Namibia was adopted by a decision of the General Assembly in 1968. The South African Government refuses to recognize the change as valid and refers to the Territory by its former name, South West Africa.

3/ Of the white population, less than two thirds are estimated to be Afrikaans-speaking, less than one third are German-speaking and the rest English-speaking.

/...

Owing to the dry nature of the climate and the prolonged droughts there is little cultivation of food crops except by African subsistence farmers. Commercial agriculture consists mainly of the rearing of cattle and karakul sheep in the plateau hardveld which at the time of the German conquest in 1885 was the home of the same black people who today have been moved to the desert margins.

B. BRIEF HISTORICAL OUTLINE

The occupation of Namibia by Germany took place between 1884 and 1890. Prior to that time the Africans lived in all the habitable areas of the Territory with four main areas of settlement: the Namas and related groups occupied the south and central plateau area, the Hereros the central and western regions, the Damaras the central region and the Ovambos the area stretching into Angola and the Okavango delta. Namibia, however, was Germany's only colony regarded as suitable for white immigration and from the very beginning it became German policy to encourage white settlement in the lands previously owned by the African inhabitants. As the head of the Settlement Commission wrote at the time:

"The decision to colonize in South (West) Africa means nothing else than that the native tribes must withdraw from the lands on which they have pastured their cattle and so let the white man pasture his cattle on those self-same lands. If the moral right of this standpoint is questioned, the answer is that for people of the cultural standard of South African Natives, the loss of their free national barbarism and the development of a class of workers in the service of and dependent on the whites is primarily a law of existence in the highest degree ..." ^{4/}

The take-over of the rich lands in the plateau hardveld, which extends roughly through the centre and south of the country between the Namib and the Kalahari deserts, met with fierce resistance on the part of the African people, culminating in the Herero and Nama rebellions (1904-1907) which were savagely crushed by the German colonial army. General von Trotha, who had acquired notoriety in Tanganyika and during the Boxer Uprising in China, was appointed Governor and Commander-in-Chief of the German expeditionary force of the Territory and issued a proclamation calling for the extermination of every Herero man, woman and child found within the borders of the German Protectorate. By the time the rebellions ended, the Herero population in Namibia had been reduced from 80,000 to 15,000, three quarters of the Namas had been killed and their lands and cattle confiscated.

^{4/}Paul Rohrbach, "Deutsche Konialwirtschaft", Band i: Südwest-Africa, Berlin (1907) p. 286, quoted by Wellington in South West Africa and Its Human Issues (London, Oxford University Press, 1967).

When in 1920, following Germany's defeat in the First World War, South West Africa became a League of Nations Mandate under South African administration. It might have seemed to the Africans that the time had come for the recovery of their lands. They had been encouraged in this belief by the Allied denunciations of the German colonial system, as well as by frequent promises made by the Governor-General of the then Union of South Africa, Lord Buxton. But the South African conquest, if anything, made their struggle for survival even more difficult. Although the "well-being and development" of the people formed, in the paternalistic words of article 22 of the Covenant, "a sacred trust of civilization" and although, under the terms of the Mandate, the mandatory Power was to promote to the utmost the material and moral well-being of the inhabitants, the South African Government did not return the lands to the original owners but, in fact, proceeded to allocate new farms to white settlers. By 1928, the white population had increased to 28,000, double the 1915 figure, despite the repatriation of some 6,000 Germans.

The Africans thus found themselves restricted to reservations mostly in the poor agricultural land in the north or in the sandvelds of the Kalahari, or to "urban locations" near centres of industry where they were normally permitted to stay only for purposes of employment.

The South African administration retained the German division of the Territory into a northern sector, comprising less than one third of the Territory, where most tribal reserves were located and where today about half of the African population lives, and a Police Zone for European settlement, comprising most of the rich mining and farming region of the central plateau. Within this zone there are a few Native reserves for the Damara, Herero and Nama groups which serve mainly as a reservoir of cheap labour for the surrounding white farms.

In 1925, in order to enable the white population to manage their own affairs, the Government of South Africa set up a Government and a Legislative Assembly in the Territory, reserving for itself full and overriding legislative and administrative authority in all matters. In addition, certain subjects, including Native affairs and the administration of Native reserves were kept under the direct control of South Africa.

Following the Second World War, South Africa made a determined effort to annex South West Africa. Although the attempt failed, largely due to strong opposition by the United Nations, South Africa proceeded to govern the Territory as its de facto fifth province. Thus, in 1951 the Territory was given representation in the all-white South African Parliament; there were six members in the House of Assembly elected directly by white suffrage, and four senators of whom two were elected indirectly to represent the white voters in the Territory and the two were nominated by the State President of South Africa. Up to November 1977 when this representation was abolished by South African proclamation all the South West Africa members of the South African Parliament belonged to the South West Africa section of South Africa's ruling National Party. In 1955, the South African

Government took over directly, through its Department of Bantu Administration and Development, the administration of Native affairs 5/ and began systematically its own apartheid policy to the Territory.

C. ODENDAAL PLAN AND SOUTH AFRICA'S POLICY OF FRAGMENTATION

In 1964, the Commission of Enquiry into South West African Affairs, appointed by the South African Government under the chairmanship of Mr. F. H. Odendaal, drew up a report on the future development of the non-white peoples of the Territory. 6/ After classifying the population into 12 ethnic groups, it recommended that each of the 11 groups classified as non-white, other than the Coloureds, should be provided with a separate self-governing reserve. 7/ This in turn meant the removal of the small African reserves still in existence on the plateau hardveld and the resettlement of their inhabitants in reserves on the desert margins. Namibia was thus to follow South Africa's apartheid pattern of a giant white area with the African population relegated to the poor border areas grouped into bantustans to be known in Namibia as "homelands", because unlike South Africa some of the African groups are not Bantu.

Under the Plan, a total of about 40 per cent of the Territory would be allocated for the non-white homelands; of the remainder of the Territory, about 43 per cent would become a white area and the rest, including the rich diamond deposits in the Namib desert, would pass directly under South African control. The proposed homelands would have to sustain a much larger population density than the white area, in areas where, for the most part, ground water is either much deeper absent altogether. According to the Odendaal Report, only about 500 of the 35,000 boreholes in the Territory were on African land. Only the Rehoboth Bastards, who are categorized as Coloured under the apartheid system, will retain land that compares favourably with most white owned land. However, they have 1.4 million hectares to support 19,000 people, compared with about 39 million hectares available for the 20,000 white farmers. 8/

The Odendaal Plan signified the beginning of a sustained effort by South Africa to fragment Namibia into a series of poverty-stricken homelands which would in due course become theoretically self-governing but would in fact remain economically dependent on the surrounding white area which would in turn be

5/ South West Africa Bantu Affairs Administration Act, No. 56 of 1954.

6/ For a more detailed summary of the recommendations contained in the Odendaal Report see Official Records of the General Assembly, Nineteenth Session, Annexes, Annex No. 8 (part II), (A/5800/Rev.1), chap. IV, paras. 18 et seq.

7/ Except for a rural irrigation settlement for Coloured farmers to be established along the Orange River, the Plan called for the resettlement of the Coloured population in Coloured townships in the three areas of their greatest concentration (Windhoek, Walvis Bay and Lüderitz).

8/ See the article by Peter Fraenkel in the October 1974 issue of the Geographical Magazine (vol. 140, part 3).

incorporated into the Republic. As a first step, in 1968 and 1969, despite the termination of the Mandate by the United Nations General Assembly in 1966, the South African Parliament, with a view to putting the Plan into effect, promulgated two acts which substantially altered the system of administration of the Territory.

The Development of Self-Government for Native Nations in South West Africa Act, 1968, provided for the creation of six Native nations to be called Ovamboland, Damaraland, Hereroland, Kaokoland, Kavangoland and East Caprivi, and authorized the establishment in each of legislative and executive councils, thus removing those areas from the jurisdiction of the territorial Government. The councils were to be empowered to legislate on a number of internal matters but in all cases the State President of the Republic of South Africa would retain the right to amend or repeal legislation, to make new laws for any Native nation by proclamation, and to replace the Government of any tribe or community. The Act also empowered the State President to establish other homelands by proclamation.

The South West Africa Affairs Act, No. 25, of 1969, ^{9/} drastically altered the pre-existing relationship between the Territory and South Africa by transferring to the Government and Parliament of the Republic jurisdiction over 25 broad categories of subjects until then within the powers of the local white Legislative Council which was thus reduced to the level of one of the Republic's four provincial councils. This change was followed by extensive action to bring the laws of the Territory into line with those of South Africa and to make South African laws applicable to the Territory.

Up to October 1977, three "self-governing" homelands, Ovamboland, Kavangoland and East Caprivi, had been established, each with a Legislative Council partly appointed and partly elected and a Cabinet headed by a Chief Minister. Four other homelands not enjoying "self-governing" status were in the process of being established. They were Bushmanland and Namaland in both of which an Advisory Board or Council was to be set up in the latter part of 1977; Damaraland where a "Representative Authority" consisting of an appointed "Legislative Council" and an "Executive Council" was installed in September 1977 and Basterland which was due to become a "homeland" in 1978.

D. OPPOSITION TO THE HOMELANDS POLICY

The attempt by South Africa to fragment Namibia encountered the resolute resistance of the Namibian people. In Ovamboland, the voters, heeding the call of the South West Africa People's Organization (SWAPO), boycotted the 1973 elections to the Legislative Council; only 2.5 per cent of the electorate went to the polls. In the election held in January 1975, although 50 per cent of the electorate voted there were widespread accusations of bribing and intimidation by SWAPO and by the other political parties which had boycotted the election. These allegations were supported by two bishops of the Evangelical Lutheran Church and by the Anglican Bishop of Damaraland, the Right Reverend Richard Wood. The International Commission of Jurists for its part pointed out that the vote had

^{9/} The Act was passed despite the opposition of the Security Council (resolution 264 (1969) of 20 March 1969).

been neither free nor secret, the poll officers frequently "advising" the electors as to whom to vote for and often filling in the ballot papers for them. Furthermore, the recruitment officers in Ovamboland had announced that those people who failed to participate in the vote would not be offered work contracts in the Police Zone. Significantly, the percentage poll among Ovambos living in the towns was about as low as in the 1973 elections.

In Damaraland, the South African Government was unable to proceed with its aim of establishing a homeland, as scheduled in the 1968 Act, owing to the refusal of the traditional Damara leaders to discuss the question until they were allowed to hold talks with the South African Prime Minister "on profound policy problems" which they said were rooted in South Africa's policy of "multinational development". The announcement in July 1977 that a "representative authority" was to be instituted was greeted in the Damara capital with placard-waving demonstrators supporting the Damara Council which opposes the Turnhalle Conference and the bantustanization of the Territory. 10/

The Hereros, for their part, have so far successfully resisted the establishment of a Herero homeland which would have involved the forcible removal of at least 10,000 people.

The creation of a Baster homeland has been strongly opposed by a large segment of the Rehoboth Baster community which has long enjoyed a limited form of autonomy in their Gebiet. The Rehoboth Volkspartei, which won all seven seats in the elections to the Basterraad, or Advisory Council, in 1974, has expressed its total opposition to the homelands policy, to separate development and to apartheid. The party lost its majority in the Basterraad in the partial elections held in 1975 which the United Nations Council for Namibia characterized as "manipulated". The announcement by Pretoria that new elections were to be held in the Rehoboth was opposed by the Baster delegation to Turnhalle whose leader, Dr. Benjamin Naudé, protested that it amounted to a violation of South African assurances to the members of the Security Council that ethnic elections were to be shelved.

E. APARTHEID IN NAMIBIA

In addition to applying its own bantustan policy to Namibia, South Africa has extended to the Territory most of its racially discriminatory legislation and practices which effectively impinge on the life of every non-white person from cradle to grave. Thus, blacks may not own land in the white area; 11/ those working in the urban areas are restricted to segregated townships and located in the urban areas where most of them are forced to live without their families. Africans do not enjoy freedom of movement outside their homeland. An African requires a permit or pass to leave his homeland, to enter any other homeland, to seek work in the white area or to stay more than 72 hours in any urban area of

10/ See Section N. below.

11/ Natives (Urban Areas) Proclamation (South West Africa), No. 56 of 1977, sect. 7.

than the one in which he was born or resides for reasons of employment. 12/ Despite recent relaxations in what is euphemistically called "petty apartheid", Africans are effectively barred from entering white restaurants or places of entertainment and must travel in segregated buses and railway carriages.

A variety of job reservation measures effectively restrict the access of non-whites to skilled employment. In the rare instances where Africans perform the same work as whites, they do not receive the same pay. 13/ In 1968, the mean annual wage of a white in Windhoek was \$US 4,565, while that of a Coloured was \$US 1,424 and that of an African was \$US 592. 14/ Furthermore, the Wage and Industrial Conciliation Ordinance, No. 35 of 1952, which governs labour relations in the Territory, virtually prevents Africans from forming and joining trade unions and from striking.

Education is strictly segregated along racial and tribal lines. In the urban areas non-white children must attend the primary school of their respective ethnic group. Although education is free for all races, it is compulsory only for whites. The Government spends 5 to 10 times as much per capita on the education of white children as it does on the education of African children. 15/ The South African Government claims a marked increase in the enrolment of Coloured and African pupils, but the figures show that most African children leave primary school without completing it. In Windhoek, figures provided by the Education Department in 1968, showed that only 25 per cent of the pupils who started primary school reached the eighth school year and that only about 2 per cent of Africans reached secondary school. 16/ It was estimated that there were only 10 African graduates in the whole of Namibia in 1973. 17/

Hospitals and other health facilities are equally segregated. Although infant mortality statistics are kept for whites and Coloureds, none is kept or at least published for Africans, presumably for fear of what the figures might convey. On the basis of the limited data available on Africans in the Republic itself, it may be assumed that the infant mortality rate for Africans is from 10 to 20 times

12/ Whites, on the other hand, require a permit (seldom given) to enter any of the homelands or the black townships in the cities. Although this is hardly a restriction for whites who are unlikely to have any compelling reason to enter the homelands or townships, the requirement of a permit has the effect of preventing the entry of white persons considered sympathetic to black aspirations.

13/ For labour conditions in Namibia, see Section G below.

14/ Source: The Windhoek Survey, quoted by Wade C. Pendleton in Katutura: a Place Where We Do Not Stay (San Diego, State University Press, 1974).

15/ In 1973/74, the State spent an estimated R 375 to R 750 per white child and R 75.75 per African child. In 1974, one rand (R) equalled approximately \$US 1.50. In October 1977, one rand equalled approximately \$US 1.15.

16/ Pendleton, op. cit.

17/ Ibid.

that for whites, and that, as in some of the South African homelands, one out of every three African children dies by the age of 10 years. According to figures quoted in the Odendaal report, per capita expenditure on health in 1962 was R 1.54 for whites and R 0.54 for blacks. 18/ In 1973, there was one hospital bed for every 72 whites and one for every 143 blacks. In the case of nurses, there was one white nurse for every 125 whites and only one black nurse for every 550 blacks. 19/ These figures do not take into account the inferior nature of facilities in African clinics.

Marriage between a white and a non-white is prohibited under the Prohibition of Mixed Marriages Ordinance, No. 19 of 1953 which also declares null and void any mixed marriage performed outside the Territory between two persons domiciled in Namibia. Sexual relations between whites and non-whites are illicit and punishable as an offence. 20/

The pass laws and the homelands system, coupled with the labour regulations have combined to cause a breakdown in the unity and stability of the African family in Namibia as much as in South Africa. Workers recruited in the homelands who constitute a majority of the labour force - are not entitled to bring their families with them. It was estimated that for the eight-year period 1960-1968, approximately 37 per cent of the adult male population was away from Ovamboland and from their wives and families for most of their married life. 21/ As the Christian Institute of Southern Africa has pointed out, 22/ such a situation has provoked severe social disruption, a marked increase in alcoholism and prostitution and a large number of broken homes where children are brought up deprived of the presence of their father.

Katutura

A typical example of life under the apartheid system in Namibia is provided by Katutura, Windhoek's African township. 23/ Whites are not allowed to enter Katutura without a permit which is issued by the municipal authorities for specific time periods and primarily to business concerns whose representatives need to enter the township. Coloureds, who are assigned to a township of their own, Khomasdal, may visit the township without a permit but they are required to have one if they stay over night. Africans not resident in Katutura require a visitor's permit. Conversely, residents of Katutura who wish to travel outside the urban area also require a pass.

18/ With the exception of a survey published in 1974 clearly with the aim of countering international criticism of its continued presence in Namibia, the South African Government in the mid-1960s ceased to publish separate statistics for Namibia. As a consequence, it has not always proved possible to quote recent figures for the Territory.

19/ South West Africa Survey, 1974.

20/ Immorality Proclamation, No. 19 of 1934.

21/ Pendleton, op. cit.

22/ Ibid.

23/ The account in this section is taken from Pendleton, op. cit.

In keeping with South Africa's policy of encouraging tribalism, Katutura is administratively and physically divided into Damara, Herero, Nama and Ovambo sections with separate primary schools for each group. Members of smaller ethnic groups, such as the Tswanas, live in a mixed group section and may send their children to any school in the township.

About 30 per cent of African men living in Katutura were regarded in 1968 as permanent residents because of having been born in the urban area and having lived or worked there continuously for the same employer for 10 years or for different employers for 15 years. The other 70 per cent of the men were regarded as temporary residents and were only allowed to reside in Katutura while they were employed. A temporary resident who loses his job has to obtain a new one or leave the township and return to the place - normally in the northern homelands - from where he came. 24/ A temporary resident must wait for two years or more before being given a house and allowed to bring his wife and family with him. As a result, most men in that category live in single quarters or lodge with friends and relatives. Africans who have not obtained resident status by the time they reach old age, are required to leave Katutura and return to their homelands.

Under the Natives (Urban Areas) Proclamation (South West Africa), No. 56 of 1951, it is an offence for an African working in Windhoek, other than as a domestic servant, to live elsewhere than in Katutura. By 9 p.m. all Africans are required to be out of Windhoek and in Katutura or, if they stay in Windhoek, in their servants' quarters they must have a night pass from a white. Furthermore, Africans working in Windhoek must carry with them at all times a document showing that they are employed and legally entitled to be in the urban area. Unmarried African women must be able to produce a paper from their employer stating that they are employed. Failure to produce any of these documents if requested to by a police officer, entails arrest and eventual prosecution and, if found guilty, a fine and/or a prison term. According to the Windhoek Annual Report, 1969, of a total 4,961 offences committed by Africans in 1969, 3,509 were for violation of the pass laws or residence requirements mentioned above. 25/

The Windhoek local authority and the South African Department of Bantu Administration and Development are responsible for the day-to-day administration of Katutura. There is a township Advisory Board consisting of the white Superintendent, various white officials and representatives of the largest ethnic groups: two for the Hereros and the Ovambos and one for the Damaras and the Namas. Of the six African members of the Board, three are appointed and three are supposedly elected, but up to 1973 no elections had been held. 26/ The Advisory Board meets once a month; as its name indicates, it plays a purely advisory role and is devoid of any real political or economic powers.

24/ Ibid., Katutura Service Contract Survey.

25/ Ibid.

26/ In 1968 the six African members of the Board had an average age of 61 years; three had served on the Board for more than 20 years and one had served for more than 44 years. None belonged to a political party or openly opposed government policy. (Pendleton, op. cit.)

F. ECONOMIC EXPLOITATION 27/

Namibia's economic wealth consists primarily of its rich mineral deposits 28/ mainly diamonds, copper and other base minerals, and more recently uranium. According to South African figures, mining contributed in 1974 to about one quarter of the gross domestic product 29/ though other sources put the figure at 50 or 60 per cent. World wide, Namibia ranked seventeenth in 1972 among all mining countries 30/ The value of minerals sold increased, according to South African statistics 31/ from R.65.1 million to R. 230.0 million in 1973. Gem diamonds, of which Namibia is the largest producer in the world, account for approximately 64 per cent of mineral sales, followed by lead and copper.

The mining sector in Namibia is almost totally dominated by multinational corporations. The two most important companies are Consolidated Diamond Mines of South West Africa Ltd. (CDM), a South African subsidiary of De Beers Consolidated Mines Ltd also a South African Company but with extensive British participation in it, and Tsumeb Corporation Ltd., owned by American Metal Climax Inc. (AMAX) and other United States and South African corporations. While CDM enjoys a virtual monopoly on diamond mining, Tsumeb accounts for 80 per cent of the base metal output in Namibia. These two corporations control between them 90 per cent of all mining production in Namibia. Other significant mining concerns in Namibia are: the South West Africa Company (SWACO) which is registered in the United Kingdom but is controlled almost equally by British and South African interests; the Otjihase copper mine in which the major shareholders are Johannesburg Consolidated Investment Company Ltd. (JCI) of South Africa, other South African interests as well as the Continental Ore Corporation of the United States; and the Oamites Copper Mine, 75 per cent of which is owned by the Canadian firm, Falconbridge Nickel Mines Ltd. In addition, it is estimated that some 13 other companies are engaged in base mineral mining in Namibia and over a score of others are actively prospecting in the Territory despite resolutions to the contrary by the Security Council and the Advisory Opinion of the International Court of Justice. 32/

The major recent development in the mining sector in Namibia, however, is the exploitation of uranium on a large scale. The effort is at present concentrated in the Rössing mine near Swakopmund on the Atlantic coast. Although exploitation of the mine only started at the end of 1976, it is expected to become the largest single uranium producer in the world by the 1980s. Rössing's reserves are estimated at 100,000 tons, which, added to South Africa's own reserves, would bring the total uranium ore under the control of the South African régime to 300,000 tons, enough to satisfy one third of the anticipated world demand in 1985 and to further facilitate South Africa's programme for developing nuclear weapons.

27/ For a more detailed analysis of this issue see the 1977 Working paper prepared by the Secretariat concerning the Activities of Foreign Economic and Other Interests in Namibia (A/AC.109/L.1160) as well as the Report on the Activities of Transnational Corporations in southern Africa (E/C.10/26 of 6 April 1977).

28/ Situated almost entirely in the area under white ownership or direct South African government control.

29/ South West Africa Survey, 1974.

30/ World Mining, Catalog Survey and Directory, 1972

31/ South West Africa Survey, 1974

32/ A list of the foreign companies operating in Namibia in 1976 appears in Appendix I below.

Although the entire venture is shrouded in a veil of secrecy imposed by South Africa through the Atomic Energy Act, it appears that 46 per cent of the shares in the Rössing mine are held by the Rio Tinto Zinc Corporation, Ltd. (RTZ) of the United Kingdom in conjunction with French, Canadian and South African companies. It also appears to be clearly established that the United Kingdom, France and Japan have already entered into sales contracts for substantial amounts of uranium ore at prices well below the current market level 33/

Commercial fishing is the second largest industry after mining, and is carried on by eight large South African companies or their affiliates, most of their produce being canned for export. In 1974, the last year for which information is available, earnings from the fishing industry exceeded R. 100 million.

Commercial farming, which is almost entirely restricted to the export of cattle and the production of karakul, is carried out by white farmers, normally accounting for 98.5 per cent of the total agricultural output.

In 1971, the International Court of Justice stated in an advisory opinion 34/ that there was an obligation on the part of States to abstain from entering into economic forms of relationships or dealings with South Africa on behalf of or concerning Namibia. In pursuance of the Court's advisory opinion, the United Nations Council for Namibia, as the de jure authority over the Territory following the termination of South Africa's Mandate by the General Assembly, enacted in 1974, Decree No. 1 for the Protection of the Natural Resources of Namibia providing inter alia that any licence or concession granted by the Government of South Africa was null and void; that any natural resource taken from Namibia without the Council's consent was liable to be seized and forfeited and that any person or corporation contravening the Decree might be held liable in damages by the future Government of an independent Namibia, 35/ The threat of legal action by the Council, coupled with the uncertainty about the Territory's future and the growing liberation struggle, seems to have had some effect in discouraging foreign investment in the Territory. This appears to have been particularly true on the part of four United States companies prospecting for oil in the Namibian offshore which decided to cease operations in the course of 1975. 36/ On the other hand, other companies have continued to invest in Namibia and several countries have kept their economic and trade links with

33/ A/AC.109/L.1160 paras. 38-46

34/ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, para. 124. See also annex X for excerpts from the Court's opinion.

35/ For the full text of the Document, see Annex IX below.

36/ The decision by the Getty Oil Company, the Phillips Petroleum Company, the Texaco Oil Company and the Continental Overseas Oil Company was also said to be linked to the decision of the United States Government to withdraw export-import credit guarantees to United States interests trading with or investing in Namibia.

South Africa as regards Namibia. Thus, it has been reported that Japan would continue to import uranium and copper ore from Namibia despite the Council's decree, 37/ while the United Kingdom has declared its intention to proceed with the purchase of uranium from the Rössing Mine, 38/ on the basis that there had been no determination by the Security Council that a threat to the peace existed and that in the British view the Decree had no legal validity. 39/ It has also been reported that a double taxation agreement between the United Kingdom and South Africa had been specifically extended to include Namibia through a separate protocol implemented in 1968. 40/

For his part, Sir Val Duncan, the late Chairman of RTZ, was quoted as telling the annual general meeting of his company in 1975 that he was not prepared to take any notice of what the United Nations said concerning Namibian uranium. 41/

Available data show that in 1969, 60 per cent of investment in minerals in Namibia came from non-South African sources which sent most of their profits out of the Territory. 42/

It is estimated that at least one third of Namibia's gross national product, exported as profits by foreign mining companies, while the taxes paid by them serve to pay for the maintenance of the illegal occupation of the Territory. Another indication of the financial benefits reaped by outside economic interests is provided by the extraordinary discrepancy between the gross domestic product and the gross national product. The last official figures published in 1962 showed that the latter was 30 per cent less than the gross domestic product. Although no recent figures have been published owing to the new South African policy of merging Namibian statistics with those of the Republic, the Financial Mail of Johannesburg estimated in March 1973 that the discrepancy between the gross domestic product and the gross national product had risen by then to as much as 50 per cent.

37/ Agence France Presse, 31 January 1975; see also the declaration by the President of the United Nations Council for Namibia on 15 May 1975 in Tokyo (The Guardian, 16 May 1975).

38/ See reply by the United Kingdom Parliamentary Under-Secretary of State, Department of Energy, to a question by Lord Brockway (Parliamentary Debates, Hansard House of Lords, 8 April 1976).

39/ Parliamentary Debates, Hansard House of Commons, 4 August 1976.

40/ The Guardian, 2 December 1975.

41/ Africa Confidential, 20 June 1975.

42/ The Guardian, 2 December 1975.

43/ Estimated in 1974 at R.615.6 million and 700 million in 1976, giving Namibia one of the highest G.D.P. "per capita" in Africa.

G. LABOUR CONDITIONS 44/

The huge profits reaped by foreign and South African companies in Namibia derive largely from cheap labour. An illustration of this was provided by an advertisement in the Wall Street Journal of 3 May 1974 according to which Tsumeb Corporation earned \$US 367 million on sales of minerals amounting to \$US 1 billion between 1947 and 1971, while labour costs amounted to only \$US 91 million during that period. The figures for this company's wages published in relation to the second half of 1973 gave the average monthly wages for blacks as R 36, while monthly wages for whites averaged R 460. According to official South African statistics published in 1974, operators of heavy vehicles at the Uis tin mine were earning basic wages "of up to R 60.32". 45/

African workers in other sectors of the Territory received equally low or even lower wages. For instance, African labourers employed by the South African Railways and Harbours received a starting wage of R 45.00 per month, rising to R 57.00 after four years of service. 46/ In the fishing industry wages averaged R 24.70 in 1973 while those paid to farm workers were estimated to range from R 6 to R 12 per month. It should be noted that according to the Windhoek Non-European Affairs Department, the minimum monthly subsistence wage in the Territory's capital was R 60 and, this figure was widely regarded as too conservative.

In keeping with South Africa's bantustan policy, over half of the African labourers in Namibia come from the northern homelands and are regarded as migrant workers who are required by law to return to their homelands on completion of their contracts, usually of 18 to 30 months' duration. A migrant worker must obtain a permit to leave his homeland and must be referred by his homeland labour bureau to employment bureaux in the Police Zone, all of which are headed by white employment officers. An African may be refused a job if, inter alia, he does not have permission from his homeland Government to leave; has overstayed his leave in the Police Zone or is bound by an existing contract. Moreover he may be forced to return to his homeland if suitable employment is not available, if he turns down three successive job offers or if his contract is cancelled.

As mentioned above (see pages 8 - 11) migrant labourers are not allowed to bring their wives and children with them and are normally housed in bachelor compounds where conditions invite comparisons with prisons. The compound for Ovambo contract workers at Katutura, for example, is surrounded by barricades and its walls are crowned by broken glass and barbed wire. Sanitary conditions are appalling, with men sleeping 20 to a room.

44/ For a more detailed description of labour conditions in the Territory, see the ILO study on Labour and Discrimination in Namibia published in 1977.

45/ South West Africa Survey, 1974.

46/ Ibid.

The exiled Anglican Bishop of Damaraland, the Right Reverend Colin Winter, has called the contract labour system worse than slavery in the sense that slaves cost their masters money and were regarded as valuable property while contract labourers are expendable and can be replaced by other labourers from the so-called homeland.

Confronted with such inhuman conditions, Ovambo workers went on strike in Windhoek in December 1973. The strike immediately spread to a number of other industrial centres, seriously disrupting the economic life of the Territory. By middle of January 1972, the labour action had affected 23 industrial centres, including 11 mines, 7 of which had to cease operations. Almost all of the 13,500 strikers were sent back to Ovamboland, but efforts to recruit workers elsewhere failed and the South African régime had no option but to negotiate for the return of the Ovambo workers. New contracts, now known as agreements, were produced. In these, the former terms "Masters" and "Servants" had become "Employers" and "Employees", but other than these changes in terminology and some pay increases, there were few changes in substance; the restrictions on mobility, enforced separation from families, inadequate wages and miserable accommodation in compounds remained. In November 1976, 700 Damara workers went on strike to protest working conditions and low pay at the Rössing uranium mine.

H. REPRESSIVE LEGISLATION

It is hardly surprising that a regime which denies the most elementary human dignity to the majority of the population should have to resort to increased measures of repression to stifle dissent. With the coming of the National Party power in 1949, South Africa has adopted an increasing amount of draconian legislation which has gradually turned the Republic into a police state. ^{47/} With the passing of the South West Africa Affairs Act, 1969 (see page 7 above) most of this legislation has been illegally extended to Namibia despite South Africa's lack of jurisdiction over the Territory following the revocation of the Mandate by the United Nations in 1966. Following is a brief description of the major legislative enactments applicable to Namibia: ^{48/}

1. Suppression of Communism Act, No. 44, of 1950

This Act, which was renamed the Internal Security Act, 1950, has been applicable to Namibia since its enactment. Besides proscribing the South African Communist Party, ^{49/} the Act empowers the State President to declare unlawful any

^{47/} For a description of South Africa's repressive legislation see A/9781.

^{48/} See also Elizabeth Landis, Human Rights in Namibia (mimeographed).

^{49/} Sect. 2.

organization which he believes to his satisfaction to be in any way connected with or pursuing the aims of communism. Communism is defined 50/ as any doctrine or scheme (a) "which aims at the establishment of a despotic government based on the dictatorship of the proletariat"; (b) "aims at bringing about any political, industrial, social, or economic change" by unlawful or violent means; (c) aims at bringing about such change under the guidance of or in co-operation with any foreign Government or international institution, one of whose purposes (professed or otherwise) is to promote in South Africa a system based on the dictatorship of the proletariat; or (d) aims at the encouragement of feelings of hostility between the European and non-European races to further the achievement of any object in (a) or (b) above.

A communist is defined as anyone who has ever professed to be a communist or who is "deemed" by the State President or by the Administrator of South-West Africa to be a communist on the grounds that he has advocated "any of the objects of communism" or "any act or omission ... calculated to further the achievement of any such object". 51/

The Act as amended in 1962 52/ gives powers to the South African Minister of Justice to issue a banning order against any person who is listed as a communist under the 1950 Act or who, in the Minister's view, advocates or "is likely" to advocate any of the objects of communism or engages in activities which are furthering or "may" further the achievement of any object of communism. 53/ Under a banning order, a person may be prohibited from being within or absenting himself from any place or area, or from communicating with any person or receiving any visitor while the order is in force. 54/ Banning orders cannot be appealed to the Courts. Violation of a banning order is punishable by 1 to 10 years' imprisonment.

2. Riotous Assemblies Act, No. 17 of 1956

This Act, which was illegally extended to Namibia in 1976, 55/ enables the South African Government to ban any assembly or gathering which the police consider would constitute a threat to State security. 56/

50/ Sect. 1 (1) (ii).

51/ Sect. 1 (1) (iii) substituted by Act No. 50 of 1951, sect. 1 (a).

52/ Act No. 76 of 1962.

53/ Section 10 of Act No. 44 of 1950, as amended by section 8 of Act No. 76 of 1962.

54/ Ibid.

55/ See the Internal Security Amendment Act, 1976 (see page 20 below).

56/ Meetings in Namibia may also be banned by a magistrate if he believes that such gathering will endanger the public peace (Riotous Assemblies and Criminal Law Amendment Ordinance, No. 9 of 1930).

3. "Sabotage Act" of 1962 57/

This instrument which is the forerunner of the Terrorism Act, defines sabotage in broad terms to include any "wrongful" or "wilful" act which injures, destroys or endangers public health or safety, public utilities or their services, law and order, free movement of traffic or State or private property. It also encompasses illegal possession of explosives, firearms or weapons and trespass on any land or building. Moreover, in a clear violation of the legal principle that everyone must be presumed innocent until proven guilty, the Act establishes a presumption of guilt in that the accused may only be acquitted if he proves that he had no intention to bring about any of 10 broadly worded "effects" which include hampering the maintenance of law and order, encouraging the achievement of any political aim or change, promoting hostilities between whites and non-whites or embarrassing the administration of the affairs of State. The penalty for sabotage is the same as that for treason: a minimum of five years' imprisonment and/or a maximum sentence of death.

4. Terrorism Act, No. 83, of 1967

The Act defines terrorism as any act whatsoever, whether committed inside or outside the Republic (or Namibia) with the "intent" to endanger the maintenance of law and order. As, with the Sabotage Act, the Terrorism Act shifts the burden of proof from the prosecution to the accused by providing that if the defendant's act "had or was likely to have" any of 12 listed results, then intent may be presumed unless the accused person proves "beyond a reasonable doubt" that he did not intend any of such results. The "results" enumerated include "embarrassing the administration of the affairs of state"; "encouraging hostility between whites and non-whites"; causing financial loss to any person or the State; promoting general disturbance or disorder; and encouraging any political objective or social or economic change, among other things, in co-operation with any foreign Government or international body or institution.

Terrorism is also defined as undergoing any training anywhere which could possibly be useful to any person intending to endanger the maintenance of law and order. Again, if the accused has been connected with training of any sort, it is up to him to prove beyond reasonable doubt that he did not undergo such training for any of the 12 results referred to above.

Finally, terrorism, is defined as possessing any explosives, ammunition, firearms or "weapons" unless the accused can prove beyond reasonable doubt that he did not intend using them to commit any act likely to have any of the 12 results listed in the first definition of terrorism.

57/ The so-called Sabotage Act is contained in Section 21 of the annual General Law Amendment Act for 1962.

The Act, which provides for penalties ranging from five years' imprisonment to death, also authorizes in section 6 the indefinite detention, incommunicado, of any person suspected of being or having aided a terrorist or having withheld information about a terrorist until the Commissioner of Police has satisfied himself that he has "satisfactorily" replied to all questions and that no useful purpose would be served by his detention.

In a clear violation of the principle of non-retroactivity, the Act makes the crime of terrorism - though not the detention provisions - retroactive for five years.

5. BOSS Act of 1969 58/

Under this law, any cabinet minister or authorized agent of the Prime Minister may prevent a Court from hearing testimony by a witness if the minister or agent certifies in writing that in his opinion the evidence or information would be prejudicial to "the interests of the State of public security". Under this provision, for example, a former detainee may be barred from testifying as to torture during interrogation or from seeking damages for maltreatment.

6. Proclamation No. R.17 of 1972 59/

This Proclamation, which placed Ovamboland under a modified form of martial law in 1972, was extended to Okavango and Caprivi in May 1976. The Proclamation bans all public meetings, restricts entrance into and departure from the district, gives Native commissioners and South African police officers the power of arrest and indefinite detention without trial and provides for severe penalties for failure to report the presence of insurgents.

Under the Proclamation, tribal officials without any judicial training may impose prison sentences for such actions as organizing or taking part in any boycott against any person or meeting convened by any public official; making "any statement" or committing "any act" intended or likely to cause inter alia "Disadvantage or inconvenience" to anyone; and treating any chief or headman with "disrespect, contempt or ridicule".

58/ This Act is a section of the General Law Amendment Act, No. 101, 1969, sect. 19, as substituted by Act No. 102 of 1972, sect. 25. It derives its popular name from the initials of the Bureau of State Security.

59/ Regulations for the Administration of the District of Ovamboland.

7. Internal Security Amendment Act, 1976

This Act amends the Suppression of Communism Act to give the South African Minister of Justice the power to detain any individual suspected by him of "endangering state security or the maintenance of public order" for three months without revealing his name or the fact of his arrest and to keep him in custody for one-year renewable periods without charges and without the right of access to counsel. The Act also empowers the Minister of Justice to detain any witness for up to six months "whenever he deems it to be in the interests of such person or of the administration of justice".

I. GROWTH OF THE NATIONAL LIBERATION STRUGGLE

Faced with a system that denies the most elementary human rights and confronted with South Africa's refusal to withdraw from Namibia in accordance with United Nations resolutions and the advisory opinion of the International Court of Justice it has become increasingly apparent to Namibians that the only road to freedom lies in the intensification of their liberation struggle.

The liberation struggle is being carried out by SWAPO, which was founded in 1960 by Herman Toivo, who has been imprisoned in Robben Island since 1968, and by Sam Nujoma, its present President. SWAPO is the movement officially recognized as the sole and authentic representative of the people of Namibia by the Organization of African Unity (OAU) and by the United Nations.

Support for SWAPO has become increasingly widespread inside the Territory, as evidenced in the successful boycott of the Ovamboland election in 1973, in the 1971 strike of Ovambo migrant workers described above (see pages 7 and 16 above) and in its ability to draw support from other political groupings. Thus, in the course of 1976, four Nama political movements as well as the Rehoboth Volkspartei, the Namibian African People's Democratic Organization (NAPDO) and the Caprivi African National Union (CANU) decided to disband and to join SWAPO. 60/

60/ There are other small African political movements in the Territory such as the South West Africa National Union (SWANU), which is allied with the Damara Tribal Executive in the Namibia National Convention (NNC); the South West Africa United National Independence Organization (SWAUNIO); the National Unity Democratic Organization (NUDO) and the Namibia National Council composed of several minor groups. In 1977, the Namibia National Council and the Namibia National Convention decided to form a united front called the Namibia National Front (NNF). There are three white political parties in Namibia: the National Party of South West Africa which, up to September 1977 was part of the ruling party in South Africa and which monopolizes all 18 seats in the Territory's Legislative Assembly; the Federal Party which is related to the New Republic Party of South Africa (formerly the United Party) which advocates a federal system in the Territory on the lines it supports for the Republic and the Herstigte Nasionale Party (HNP), a right-wing splinter group of the National Party.