THIS WEEK IN NAMIBIA
Week of May 21 - 28, 1989

(A weekly report filed by the Lawyers' Committee for Civil Rights Southern Africa Project Staff in Namibia.)

1. General Comments: This week, following the May 19th meeting of the Joint Military Monitoring Commission (JMMC) at Cahama, UNTAG jubilantly reported that 435 was "back on track." The JMMC (comprised of Angola, South Africa and Cuba with the U.S. and U.S.S.R. as observers) was given assurances by both the UN Special Representative (SR) Martti Ahtisaari and the Administrator-General (AG) of Namibia Louis Pienaar that South African troops were re-confined to base and that SWAPO combatants were above the 16th parallel in Angola. The cloud that has been hovering over UNTAG since the events of April 1st appears to have momentarily lifted and the withdrawal of South African troops has been resumed. South African Defense Force (SADF) bases are now being dismantled, military convoys moving South are regularly sighted, and the SADF estimates the phased withdrawal of forces will be completed one week ahead of schedule on June 24.

Despite the positive mood of UNTAG officials (one remarked that the situation was "back to March 31"), a sense of insecurity in the North prevails. It was reported on May 23, four days after Cahama, that South West African Police (SWAPOL) forces were still searching for approximately 300 SWAPO fighters. In addition, members of the counter-insurgency unit Koevoet, who were incorporated into SWAPOL just prior to April 1st, appear to be engaging in frequent acts of violence and intimidation. On May 15, 16 year old Joseph Nenghama was shot and killed by "security forces" while riding his bicycle on the road to Ruacana in the North. On May 21, teenager Johannes Nghilundilwa was shot dead, allegedly by a Koevoet/SWAPOL member, while singing freedom songs with friends outside a "cuca" shop in Oshakati. Former Koevoet members still travel in armored Casspirs, reportedly arriving in large numbers of the notorious vehicles to investigate incidents of intimidation. Apparently to counteract this practice, UNTAG itself has purchased Casspirs, which will be painted white and used to accompany Koevoet.
2. **School Boycott:** In response to repeated incidents of intimidation and the generally unstable security situation in the North, a mass boycott of secondary and primary schools in Ovamboland was launched on May 18. By May 25, nearly 20,000 students and 28 secondary and primary schools were involved (i.e. closed). The students' protest met with an uncompromising response from the Administrator-General who demanded that students, in the company of an adult or guardian, re-register for school by May 26 and sign an undertaking to the effect that they would not engage in political activities at the schools, either during or after school hours. On May 24, the Namibian National Students Organization (NANSO) met, unanimously rejected the AG's ultimatum and refused to return to school until the police force was entirely purged of Koevoet members, whose presence "endangers the safety of returnees." By 4:30 pm on May 26th, not a single student had registered.

3. **Res. 435 Provisions:**
   a) **Repatriation process:**

   The repatriation process scheduled to begin on May 15, remains at a standstill awaiting the declaration of a general amnesty and the repeal of discriminatory and restrictive laws, both of which are necessary to secure the safety of returnees. A new twist developed in this regard on May 23rd, when UNTAG spokesman Cedric Thornberry suggested that the amnesty and repeal "don't have quite the same time frame," implying that repatriation might commence once a general amnesty had been declared, though discriminatory and restrictive laws would not yet have been repealed. Later in the week Thornberry also implied that repatriation might begin without either general amnesty or repeal of laws under assurance by the AG that no refugee returning under such conditions would be prosecuted.

   Apparently Mr. Thornberry believes that grounds for commencing repatriation without the repeal of discriminatory and restrictive laws can be found in discrepancies in the documents governing the implementation of 435. However, the original schedule drafted in 1978 and UNTAG's own published schedule dictate that the repeal of laws must occur prior to the return of refugees. In any case, even if UNTAG discovers grounds for upholding such a move, church leaders, legal advisors and, apparently, officials of the United Nations High Commissioner for Refugees (UNHCR) are unlikely to accept such terms. Whether the exigencies of the shrinking 435 timetable will force a compromise, however, remains to be seen.

   b) **Amnesty and Repeal of Discriminatory and Restrictive Laws:**

   Both UNTAG and the Administrator-General imply that the other party is responsible for delays in resolving this crucial
aspect of the implementation process, now approximately two weeks overdue.

Sticking points on the question of general amnesty reportedly revolve around the AG's contention that while amnesty may permanently excuse political offenses, it should cover "non-political offenders" for only a prescribed period of time. In this view, the general amnesty would be extended, for example, until just after the November elections, following which it would no longer apply to "non-political offenders." The designation "non-political," however, is open to interpretation and has reportedly been used in the past to justify clearly political arrests. Apparently UNTAG has been unwilling to accept the AG's terms and is calling for an unqualified general amnesty.

Problems surrounding the repeal of discriminatory and restrictive legislation have not been publicly disclosed, though Mr. Thornberry has commented that they relate more to the definition of restrictive laws than to the definition of discriminatory laws. In addition, disagreement reportedly persists as to whether the repeal should be a general repeal of all such laws including but not confined to an initial list, or whether it should be more limited in scope. As this point of contention suggests, no final agreement has been reached regarding exactly which laws will ultimately be affected.

c) Release of Political Prisoners:

Under Res. 435, the release of all political prisoners must be completed by nine weeks into the independence process. The Legal Assistance Center, a local public interest law firm headed by advocate David Smuts, submitted to UNTAG a list of 28 persons allegedly held for political reasons in Windhoek prison. UNTAG received lists of alleged political prisoners from a number of additional internal and international sources. In total, UNTAG received approximately 300 names. UNTAG also received lists of alleged SWAPO political detainees, in numbers ranging from 200 to 300 names.

Seeking to facilitate the release of political prisoners, UN Special Representative Martti Ahtisaari sent letters to both the AG and SWAPO. As of May 25, Ahtisaari had not received a response from the AG. On May 24, SWAPO announced that it released a group of detainees in mid-February, who would be treated like all other Namibians and return with refugees through the repatriation process. The next day SWAPO announced that it has pardoned and freed "misguided elements who infiltrated the rank and file of SWAPO with the aim of serving the war efforts of the adversary." UN officials confirmed that 199 persons detained by SWAPO had been released and were in contact with UN staff in Luanda, Angola.

Matters relating to the release of political prisoners are largely in the hands of UNTAG's independent jurist.
4. **Electoral Process:**

**Registration and Election Laws:**

Comments on the draft proclamation regarding voter registration (General Notice No. 58, April 24, 1989) were received by the AG and the SR from the Council of Churches of Namibia, the Legal Assistance Center, the National Union of Namibian Workers, the South West African Peoples' Organizations and other internal and international organizations including the Lawyers' Committee for Civil Rights Under Law. The comment period closed May 15, and negotiations regarding the final proclamation have begun. The AG and SR are scheduled to meet and discuss the matter this coming Wednesday, May 31. Reportedly neither the final registration law nor the additional election laws are likely to be promulgated anytime in the near future.

5. **Intimidation:**

**Formation of the Commission of Inquiry:**

On May 22, 1989, the AG issued Proclamation Number AG. 11, subtitled Establishment and Powers of Commission for the Prevention and Combatting of Intimidation and Election Malpractices. Formation of the Commission, charged by local advocate Bryan O'Linn, was first announced in mid-April, following increasing reports of incidents of political intimidation and complaints that they were not being expeditiously investigated. Under AG. 11, the Commission will have widespread powers to investigate allegations of intimidation, assault, corruption and bribery and to compel testimony from any person regarding details of allegations (including sources), with no exemption for clergy or press. There is no prohibition on self-incrimination (though self-incriminating statements cannot be used against the witness) and no provision for legal representation.

Though the Proclamation was not a draft and did not call for comment, the National Union of Namibian Workers (NUNW) released a press statement raising several concerns regarding the Commission's "independence." In particular, the NUNW questioned the AG's power under AG. 11 to hire and fire Commission members, to decide whether the Commission's proceedings will be closed to the public when he deems it not in the public or national interest to keep them open and, on appeal, to set aside without hearing any recommendation made by the Commission. In addition, local commentators noted the potential for infringement on press freedom created by the Commission's ability to require testimony as to source and, under Section 7 (1c), to compel newspapers to print corrective stories if their initial reports are found to be inaccurate by the Commission.

Concern with the Commission of Inquiry's possible bias and potential for secrecy reflects a more fundamental frustration
that the function of investigation is not being served by UNTAG. According to SR and AG interpretations of Res. 435, incidents of intimidation may be reported to and monitored by UNTAG, but they can be investigated only by SWAPOL. The AG recently stressed this distinction, adding that "interference [by UNTAG] will not be countenanced," and Mr. Thornberry regularly reiterates that UNTAG must defer to SWAPOL's investigatory power. Few victims of intimidation, however, view SWAPOL as a neutral party. They and other concerned parties hoped that the Commission would constitute an "alternative independent and non-partisan" investigatory body. To some extent, AG. 11 dashed these hopes, though Advocate O'Linn maintains that the Commission will function independently of the AG and that its findings will be public.

Formation of the Commission of Inquiry takes place as the whole question of intimidation is itself becoming increasingly politicized. Cases of intimidation brought by church leaders, students, SWAPO supporters and Namibians in general are now being met with counter-accusations by the security forces and police. For example, a Supreme Court application brought by SWAPO and NANSO against the security forces, and particularly the 202 Battalion, was met by a counter-application from 202 members charging SWAPO and NANSO members with intimidating them. In a similar vein, eight South West African Police members are considering suing SWAPO as a result of injuries suffered during early April. On May 26, the Administrator-General's office intimated that the AG might bring NANSO before O'Linn's Commission, charging the student organization with intimidating students to join the school boycott. These counter-allegations are generally seen as fairly transparent attempts to involve student and other local groups in largely spurious court cases which, because they have to be answered, serve to distract these groups from other more pressing considerations.