

TRANSITION IN NAMIBIA 1989-1990: AND THE SOUTH AFRICAN CASE¹

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I

Whatever the outcome of the transition now underway in South Africa - and historians of the future may look back on it as the single most important stage in an uneven process of transition, in the southern African region as a whole, from white minority and colonial rule to multi-party democracy - it began when a process of transition in neighbouring Namibia was moving towards completion and any understanding of the context of the South African transition must inevitably take account of the Namibian case. Though many references have been made to Namibia as a possible model for South Africa to follow, to date only brief assessments of the Namibian transition have been published, and none of them explains at all adequately why that process was completed in the way it was, or contrasts what happened in Namibia with the process now underway in South Africa.²

The two cases are, of course, from many points of view very different, necessarily so when Namibia, though over two-thirds the land area of South Africa, has a population less than that of Greater Cape Town. No party outflanked SWAPO, the leading nationalist party, on the left; its main opponent, the Democratic Turnhalle Alliance (DTA), does not have Inkatha's single ethnic base. In the Namibian case, the transition was from *de facto* colonial rule to independence, whereas South Africa - whether its present government be regarded as legitimate or illegitimate - is a sovereign, independent state, and the question at issue is how power can be shared, or transferred within such a state. As for similarities, and links, between the two transitions, there is the central role played by the same South African government - the key South African player in the Namibian transition, Administrator-General (AG) Louis Pienaar, is today a member of the South African government - and the same legacy of apartheid: SWAPO deliberately chose the thirtieth anniversary of the Sharpeville massacre as the date for Namibian independence. What was at issue in Namibia before 1990 was not independence alone, but also, crucially, the way it would be achieved and the likely form of post-independence rule. In Namibia, as now in South Africa, one can argue, the fundamental question was whether racist, authoritarian minority rule could be transformed into some form of liberal democratic rule.³

A question on which we can only speculate is the relationship between the two transitions. The same economic pressures on South Africa played a part both in the decision to withdraw from Namibia and to reform internally, though it is generally agreed that the set of military reverses which the South African Defence Force suffered at Cuito Cuanavale and then in Cunene Province in the first half of 1988 were the single most important factor which pushed the South African government into withdrawal. If there is truth in what President de Klerk has claimed on a number of occasions since he took office - that the origins of the reform process he initiated in 1990 lie as far back as 1986, ie well before the decision was taken to withdraw from Namibia⁴ - it may be that a secondary consideration in that decision was that the government wished to get rid of that territory as a prelude to internal reform; or perhaps, once pushed into withdrawing from Namibia, it decided to use that withdrawal as a trial run for South Africa itself, wanting to see what would happen there before it risked moving towards democracy at home. It has recently been claimed that it was only after a National Party mission to Namibia reported in January 1990 that the Namibian transition had been a success, in the sense that it would produce a government which would pose no threat to South African interests, that the decision was taken to proceed with major reform in South Africa itself.⁵ When he wrote his 2 February 1990 speech, President de Klerk must have known that if he was to play an important role at the Namibian independence celebrations seven weeks later, he had first to make bold moves internally. He must also have known that if he did not move internally, pressures on South Africa would inevitably mount following Namibian independence.

Whatever the exact relationship between the transitions, from the perspective of present-day South Africa, the Namibian transition, though it began disastrously, appears to have been remarkably successful. Within less than a year, an internationally-monitored election was organised and the Constituent Assembly then elected adopted a constitution for an independent Namibia. The South African transition had been underway nearly two years before the long-promised all-party conference met, while continuing violence is only the chief among a number of obstacles in the way of a negotiated settlement and the introduction of a democratic order. That we are still only at the beginning of the South African transition makes a detailed comparison between it and the Namibian case premature, but the Namibian transition, of interest for its own sake, can still provide pointers to the way the South African transition may develop.

II

The reasons why the Namibian transition was relatively short, and ended as successfully as it did, lie as much in the years before the formal transition began

in April 1989 as in the way the transition itself took place between then and independence on 21 March 1990. To understand the transition, then, it is necessary first to consider some aspects of the earlier history of the Namibian issue. The transition of 1989-90 essentially followed a plan worked out over ten years earlier in negotiations in which the Western Contact Group put proposals before South Africa and SWAPO in turn, which were, after negotiations with each party, accepted and approved by the United Nations (UN) Security Council in September 1978.⁶ This plan provided for a three-phase transition: in the first phase, after a ceasefire, steps were to be taken to make possible the holding of a free and fair election: the withdrawal of all but a small South African military force, which was to be confined to base; the release of political prisoners; the repeal of discriminatory laws; the return of exiles and refugees. Then in the second phase there was to be an election campaign, culminating in the election of a Constituent Assembly. In the third, that Assembly was to draft and adopt a constitution and set a date for independence. The Assembly could if it wished - for the plan was silent on this - turn itself into the Parliament of the new nation without a further election.

A second essential part of the plan was that a United Nations Transitional Assistance Group (UNTAG) would monitor the whole process and see that the election was free and fair. But - and this was the crucial concession to South Africa - the South African-appointed Administrator-General (AG) was to continue governing the country during the transition, and be responsible for the maintenance of law and order. At first sight this was a surprising concession, given the illegality of the South African regime in international law and the standpoint of the UN that it itself was the sole legitimate authority in the territory. It was, however, an essential concession to the reality that South Africa occupied the territory and could not easily be dislodged from it against its will, and would not have accepted the plan had it been required to withdraw before the election was held.

The most important addition to the original plan was made in 1982. The so-called Constitutional Principles accepted by the parties that year were deliberately designed to answer South African concerns about a future SWAPO government, in the aftermath of Robert Mugabe's victory in Zimbabwe. These guidelines concerned both the process by which the constitution would be drawn up, and the form of the constitution itself. As regards process, the key provision was that the constitution should be adopted by a two-thirds majority of the members of the Constituent Assembly. The declaration of fundamental human rights which, according to the principles, was to form part of the constitution, provided for protection against arbitrary deprivation of private property and ruled out expropriation of property without just compensation, while another

clause concerned fair administration of personnel policy in relation to the public service.⁷ These provisions meant that any government of an independent Namibia would be severely restricted in, say, attempting to carry through any programme of nationalisation or land reform, or in ridding itself of the 40,000 white civil servants. Whether SWAPO, in 1982 and after, thought it could evade these principles when it came to power is not clear; though never embodied in a UN Security Council resolution, the Secretary-General declared them binding on all parties,⁸ and on the eve of the election in November 1989 Pik Botha claimed to have guarantees from the US and UK governments that they would be adhered to.⁹

In November 1985, in a final agreement on the content of the plan, the parties agreed that the election would be based on a proportional representation system, which would favour smaller parties, rather than the 'winner take all' Westminster system. With that, the plan was said to be complete.

I have considered elsewhere the reasons why the South African government refused to allow implementation of the plan for over a decade, and why, in 1988, agreement was reached on implementation.¹⁰ Because resolution of the Namibian conflict had become intimately connected to what was occurring in southern Angola, the 1988 negotiations primarily concerned the extrication of the South African forces from southern Angola and the phased withdrawal of Cuban forces from that country. It was fundamental to that deal that implementation of the UN plan would begin, but the plan as worked out between 1977 and 1985 was not modified in any way. SWAPO was not a party to the 1988 negotiations, which partly explains its disastrous decision to send members of its military wing, PLAN, to establish bases in the north as the transition began, a decision which led directly to the deaths of over 300 of its men at the hands of the security forces in the first weeks of April. In terms of the transition plan, the military conflict was to have ended formally as transition began. When conflict erupted again in April 1989, implementation was suspended. Once that conflict was resolved, it got underway again,¹¹ but the crisis exerted a sobering effect on the parties: it was a reminder of the fragility of the whole process. South Africa, accused of ruthlessness, was given an excuse not to demobilise the paramilitary counterinsurgency unit Koevoet, which had been incorporated in the South West African Police; SWAPO's international standing plummeted and it was thrown on the defensive; and the authority of UNTAG, which was accused of giving in to the South Africans, was weakened. On the other hand, the very fact that so severe a crisis was resolved suggested that nothing was likely to prevent the successful completion of the transition.

III

Before I consider the transition itself, let me notice that what happened after April 1989 was also shaped in part by the fact that a kind of independence for the territory had been on the South African agenda from the mid-1970s; a broader 'transition' from South African rule had begun then. The gradual evolution away from a racial order during the previous decade undoubtedly helped prevent a mass exodus of whites in 1989: by then a transitional [sic] government of national unity, which had a majority of black ministers, had been in office for over three years, and though it lacked legitimacy, not being elected, it helped allay white fears of black rule. And the way the UN plan would operate was fine-tuned in the long period during which implementation was stalled, though, as we shall note, by no means all the weaknesses in the plan were ironed out.

Much of the language contained in the agreements was in fact vague, opening the door for differences of interpretation. In particular, the relationship between the two major authorities in the transition period, the South African-appointed AG and the UN Secretary-General's Special Representative (SR), was not spelt out, and no machinery was provided for mediating differences between them. The Western Contact Group proposals of 1978 merely spoke of UNTAG exercising 'supervision and control' of the electoral process. In 1989 the UN authorities chose to interpret 'supervision and control' in a restrictive way, viewing their role as little more than a monitoring one, in which they reacted to what the administration did, and employed no enforcement powers.¹² UNTAG headquarters freely admitted that in the north it was unable to supervise adequately the activities of the South West African Police. Though the number of UNTAG police monitors was increased fourfold from the original 360, they were told that they had no powers to intervene, and so were unable to stop breaches of law and order and partisan acts by SWAPOL.¹³ Charges of intimidation sent in to UNTAG headquarters in Windhoek from the regional offices were not always followed up.¹⁴

Another essential element of the plan as elaborated in 1978 was that it contained a timetable for the sequence of events leading to the election of the Constituent Assembly. The timetable provided that that election should take place seven months after the transition began and, despite delays, caused in part by the April crisis, in the repeal of racially discriminatory laws affecting the electoral process, in the return of exiles, and, especially, in organising the election, the election itself was postponed by only one week. (It could not be further postponed, it was said, because the weather would then be too hot and the coming of the rainy season in the north might make the holding of an election impossible.) The need to keep to a timetable meant that obstacles had either to be resolved within a relatively short period of time, or ignored. Problem cases involving the release

of political prisoners, for example, were resolved relatively speedily by an international jurist.¹⁵

No special interim government was put in place in Namibia during the transition: the Transitional Government of National Unity, which had been installed in office in June 1985, was dissolved before the transition began, and the AG was given full legislative and executive powers, as on a number of previous occasions, and he continued to exercise those powers until independence. It was he who issued the electoral laws and convened the Constituent Assembly.¹⁶ He had, admittedly, to consult UNTAG in what he did, and his draft proclamations providing for registration, for the election itself, and for the convening of the Constituent Assembly were in each case modified after harsh criticism from UNTAG and various non-governmental monitoring groups.¹⁷ But the SR's objections to what the AG did were by no means always heeded, and while UNTAG, because the UN itself had long given SWAPO a special status, bent over backwards to be impartial, South African partiality to the anti-SWAPO parties was barely, if at all, concealed.

IV

The South African government had long feared that implementation of the plan embodied in UNSC Resolution 435 would bring to power a radical government which would be hostile to South African interests and might plunge Namibia into civil war.¹⁸ From the mid-1970s, first the Vorster and then the Botha government had hoped to build up a client party in the territory to which power could be transferred, or which might even win an internationally-monitored election, if one were held. When that strategy seemed unlikely to work, the fall-back was to ensure that if SWAPO did win an internationally-monitored election it would not obtain a two-thirds majority. If SWAPO were to win an overwhelming majority, and begin to implement policies the South African government did not like, it had strong cards to play, having a stranglehold over the Namibian economy¹⁹ and the means to destabilise the new regime. Once the decision was taken to withdraw from Namibia, it would seem that South African strategy was, on the one hand, to try to gain as much international credit as possible from allowing the process to take place smoothly, and on the other to try to manage the transition as far as was possible in South African interests, which meant preventing SWAPO from obtaining a two-thirds majority. These aims were often in conflict. Pik Botha's Department of Foreign Affairs wished to create the impression that South Africa was acting strictly according to the rules and entirely honourably, yet we now know, thanks to the revelations that emerged concerning state funding of Inkatha in July 1991, that the cabinet of which he was a member approved covert funding of over R100-million for the anti-SWAPO parties.

When it was announced that SWAPO had received 57% of the vote, Pik Botha was very pleased to announce that he had only been one percent out in his prediction.²⁰ We know that the government as a whole wanted such a result, but not what it was told about the 'dirty tricks' carried out by military intelligence and other security-related state agencies in order to prevent a SWAPO victory.²¹

It is impossible to measure the effect on the election of the South African government's funding of the anti-SWAPO parties, contrary to both the spirit of the agreement it had signed with Angola and Cuba in July 1988 and to UN Security Council Resolution 435 itself,²² or, say, the impact of the assassination of Anton Lubowski, the leading white member of SWAPO, in September. That was probably the work of the Civil Co-operation Bureau, a secret project of military intelligence, which also employed Nico Basson, who spent lavishly to publicise the claims of maltreatment by SWAPO detainees on their return from SWAPO's prisons outside Lubango in Angola.²³ These actions may have played only a marginal role, if that, in ensuring that the anti-SWAPO parties did obtain a blocking third in the November election. Large sums of South African money had been given Bishop Muzorewa in Rhodesia ten years before, yet Mugabe had won an overwhelming victory. SWAPO's failure to confront the detainee scandal and the tragedy of the missing persons²⁴ would have cost it many votes whether Basson had taken up the cause or not. Perhaps more important in determining the result of the election were the actions, and non-actions, of the administration in Windhoek.

In terms of a UN agreement - made in 1983 but kept confidential until 1989 - that administration was supposed to be impartial in carrying out its task, acting only as a caretaker and holding the ring while the election took place.²⁵ Some of its actions after April 1989 may have been the result of bureaucratic incompetence and inertia, and of genuine differences of interpretation of what was required in terms of the agreed transition arrangements, but the administration certainly exploited every opportunity to work to the advantage of the anti-SWAPO parties.

This was seen above all in its failure to demobilise the ex-Koevoet members in the South West African Police, who were widely accused of large-scale intimidation of SWAPO supporters in the north.²⁶ Even after the UN Security Council in August criticised the failure of the administration to act in this matter, and went on to note that the provisions of the UN Plan 'are not being fully complied with',²⁷ the AG waited until October, just weeks before the election, to take effective steps to demobilise Koevoet. The SR also urged the AG to dissolve the entire ethnic structure of administration but that was never done, on the grounds that that structure did not 'abridge or inhibit' the objective of a free and fair election. The Chief Electoral Officer appointed by the AG was shown

to have been a member of the National Security Council which at a meeting the previous September had discussed how to defeat SWAPO in the election,²⁸ yet he was retained in his post. Nothing effective was done to make the South West African Broadcasting Corporation change its ways; until the election it continued to demonstrate blatant anti-SWAPO bias.²⁹ And the election law itself was not promulgated until the middle of October, too close to the election to allow its contents to be widely publicised. Perhaps most extraordinary of all, though without result, the Draft Constituent Assembly proclamation which the AG issued on 21 July said that he was not obliged to give effect to any recommendation it might make; not surprisingly, that provoked immediate condemnation and it was withdrawn.³⁰ The provision in the AG's law that anyone either born in Namibia or with natural parents born there could vote³¹ made it possible for 10,000 ex-Namibians resident in South Africa - more than were needed for a seat in the Assembly - to be bussed back to the territory to register and vote, or be flown to Windhoek for that purpose.

Such actions by the AG led many international observers in the months before the election to doubt whether the SR could possibly certify it 'free and fair'. The Commonwealth Observer Group, one of the most influential of such monitoring teams, reported in October 1989 that the process was 'extraordinarily fragile' and pointed to various ways in which the South African authorities had, in its view, flouted the agreed procedure.³² Many of the concerns voiced most strongly, however, related to the way the election was being organised; it was feared that for a variety of reasons voters would not be able to cast their votes. But in the event over 97% of the registered voters voted, there were few spoilt papers, and most observers accepted that only a few relatively minor problems - delays in obtaining ballot boxes in certain areas, for example - marred the election itself. So the SR was able to declare it free and fair, and 'a shining lesson in democracy', on 14 November,³³ and what had gone before was then largely forgotten. Having won the election, SWAPO was prepared to say that it had been free, if not fair, and it did not alter that assessment even when the South African funding of anti-SWAPO parties was disclosed.³⁴

There is no doubt that the administration was constrained to some extent by a concern that South Africa should gain credit internationally from the way it allowed the process to take place, and by the knowledge that the SR was required to declare the electoral process free and fair. On the other hand, it knew that the SR would be under enormous pressure to do that, for there was no question of holding another election, and the UNTAG budget lasted for only a year. In the event, intimidation in the north seems to have been counter-productive; less than a month after the very belated demobilisation of Koevoet the people of Ovamboland voted overwhelmingly for SWAPO.³⁵ Ironically, it may be that had the administration been strictly impartial, the final outcome - the type of government Namibia obtained - would not have been very different.

V

While there was an agreed timetable on the run-up to the election, it was not possible to lay down in advance how long the Constituent Assembly would take to draft and adopt the new constitution. In fact, it took only 80 days, in large part because its members wished to achieve independence as soon as possible, and before the last of the UNTAG forces departed from the territory. Suspicions lingered that South Africa, not wanting to see a SWAPO government in office, might still try to delay independence or interfere in the process in some way. Even the DTA members, who were reported by one commentator, rather unkindly, to be 'tired of dancing as South African puppets',³⁶ made clear that they wanted independence as soon as possible.

The Constituent Assembly was able to work so rapidly because of the spirit of reconciliation and compromise that prevailed from the first session.³⁷ The closer SWAPO came to power, the more pragmatic and non-ideological it became. That process was of course helped by the changed world-order, with one-party Marxist regimes in Europe and Africa under challenge. As the Namibian people went to the polls, the Berlin Wall fell, and events in Eastern Europe were referred to on a number of occasions in debates in the Constituent Assembly.³⁸ SWAPO's list of candidates for election had included a number of non-SWAPO people, and when it announced its government-in-waiting in December, it once again included people from outside the party. And when members of the different parties met in the Assembly, they found, to their surprise, that they had interests in common, and that all identified as Namibians.

Not having won two-thirds of the vote, SWAPO had to compromise if lengthy constitutional wrangles were to be avoided. In its final form the AG's proclamation convening a Constituent Assembly did not contain the constitutional provisions of the 1982 principles, but only those concerning process, including the requirement that the constitution should be adopted by a two-thirds majority.³⁹ SWAPO rejected his proclamation on the grounds that the AG should have no say in how the Constituent Assembly should operate,⁴⁰ but at the first sitting it proposed the adoption of the 1982 Principles in full.⁴¹ After that, major differences still remained between SWAPO and its opponents, who wanted a head of state with only ceremonial powers, a parliamentary system, proportional representation, a bicameral legislature and no detention without trial. A Standing Committee meeting behind closed doors resolved many of these differences, and in the end SWAPO was given the executive presidency it wanted, but the president's term was limited to 10 years; detention without trial was dropped; proportional representation was adopted instead of the constituency system which SWAPO favoured; and a second chamber was to be established in future to act as a additional check on the National Assembly. On 9 February 1990, the

constitution - widely acclaimed as one of the world's most democratic, and an outstanding human rights document⁴² - was approved unanimously by the Constituent Assembly.⁴³ When the transition began, few had dared hope for such an outcome.

VI

In Namibia, then, there was a long-drawn out interregnum, but a relatively brief formal transition; third-party mediation had secured agreement by the two main players to an agreed formula, including a timetable, in earlier talks; the role of the UN, though much more limited than many wished, was nevertheless, as a monitor, crucial to the outcome.

In South Africa, by contrast, there was no bargain struck before transition began, no prior negotiation except for the talks held between the imprisoned Nelson Mandela and members of the government;⁴⁴ and the transition followed no previously agreed formula or timetable (the only 'deadline' is the need for a new constitution to be in place before late-1994, when another election is required for the racist tricameral Parliament). There was no agreement from the outset to refer problem cases involving the release of political prisoners to agreed arbitration, with the result that the issue of the release of such prisoners, instead of aiding the process towards negotiations, long hindered attempts to get substantive negotiations going. It seems highly unlikely that any international body - the UN or Commonwealth - will be allowed to monitor the first general election.⁴⁵ It is not even clear whether there will be an elected Constituent Assembly.

While the government says it recognises the problem of being both active player and neutral referee at the same time, it nevertheless wishes to control events, and argues that the election of a Constituent Assembly would pre-empt the negotiating process, for from its perspective the whole point of negotiation is to produce an electoral system which will not make possible undiluted majority rule, and a Constituent Assembly elected by direct proportional representation would not contain the checks and balances it wants to see written into the new constitution. On the other hand, only an elected Constituent Assembly will legitimate a new constitutional order.

Already the government has had to backtrack, allowing the UN High Commission for Refugees, as in Namibia, to organise the return of exiles, though without conceding a general amnesty, and accepting the need for some kind of transitional arrangements. It may be that something along the lines of the recent proposals put forward by the Democratic Party, themselves influenced by, though in significant respects different from, the Namibian model, will be adopted: that the all-party conference will agree on basic constitutional principles and procedures; that a constitutional conference will then be elected to adopt a constitution;

and that another election will then be held to elect a new government.

Not only has much water still to flow under the South African constitutional bridge; the bridge itself may yet be washed away. Only when, and if, we get to the other side will a full comparison between the South African and Namibian transitions be possible.

NOTES

1. This is a version of a paper presented to the conference of the African Studies Association of Australia and the Pacific, held at the University of Western Australia in December 1991. I wish to thank the Human Sciences Research Council, which has helped fund the project of which this is a byproduct. Opinions expressed and conclusions arrived at are those of the author and do not necessarily represent the views of the Centre for Science Development or the HSRC.
2. Many articles appeared at the time in such publications as *Action on Namibia*, *This Week in Namibia*, *Africa Report*, *Southern Africa Report*. Some observer groups published post-mortems (eg National Democratic Institute for International Affairs, *Nation Building: the UN and Namibia* (Washington, 1990)). More reflective assessments may be found in B Wood, 'Introduction: the UN Plan for Namibia and its initial implementation', in *Namibia: essential documents of the United Nations Independence Plan, 1976-89* (London, 1989); R Jaster, 'The 1988 Peace Accords and the future of South-Western Africa', *Adelphi Papers*, 253 (London, 1990), ch3; A du Pisani, 'Namibia: a nation in the making', *South Africa International*, 20(4), April 1990 (virtually identical to his 'Mi N!Ore O Namibia', in *Geopolitique et Geostrategie dans L'Hemisphere Sud* (Reunion, 1990)).
3. For a brief general overview see A du Toit, 'South Africa as another case of transition from authoritarian rule', IDASA Occasional Papers, 32 (nd [1990?]).
4. In July 1987 PW Botha was considering releasing Nelson Mandela on parole (*Sunday Times*, 24.11.91).
5. *Southscan*, 6/23, p197; *Cape Times*, 27.07.91; *South*, 14.11.91; statements by N Basson re 'Operation Agree'; N Basson, 'De Klerk's Double Agenda', in *Work in Progress*, 79 (1991). Cf A Sparks, 'FW must have known of secret funding', *Reality*, September 1991, p16.
6. One of the clearest accounts of the negotiating process in the late 1970s is Margaret P Kams, 'Ad Hoc Multilateral Diplomacy: the US, the Contact Group and Namibia', *International Organisation*, 43(1) (Winter, 1987).
7. UN Security Council Document S/15287: letter dated 12 July 1982 from the Representatives of Canada, France, the Federal Republic of Germany, the United Kingdom... and the United States of America to the Secretary-General. Cf M Wiechers, 'Namibia: the 1982 Constitutional Principles and their legal significance', *South African Yearbook for International Law*, 15 (1989-90).
8. UN document S/20412 (23 January 1989), para 35.
9. *Cape Times*, 07.11.89.
10. C Saunders, 'South African strategy and Namibian decolonisation', presented to African Studies Association conference, Baltimore, November 1990. Cf G Bender, 'Peacemaking in Southern Africa: the Luanda-Pretoria tug-of-war', *Third World Quarterly*, January 1989.
11. The fullest account available at present is one written to defend the role of the South African and South West African forces: P Stiff, *Nine Days of War and South Africa's Final Days in Namibia* (new edition, Alberton, 1991).
12. The UN was much criticised for this, eg by the Commission on Independence for Namibia: see *South Africa and Namibia*, esp p17 and, for more detail, *Report of the Second Observer Mission of the Commission on Independence for Namibia* (Washington, 1989).
13. See eg C Thornberry, 'Some thoughts on the first phase of the Namibian independence process', SA Institute of International Affairs, Johannesburg 1989, p3.
14. E Landis, interview with the author, New York, October 1990; B Canton, 'Dirty tricks in Namibia: the voter registration drive', Yale University seminar paper, October 1989.
15. Professor Carl Norgaard, President of the European Human Rights Commission, was appointed by the Secretary-General to advise the SR. See G Erasmus, 'Namibian independence and the release of political prisoners', *South African Yearbook of International Law*, 14 (1988-89); J Rautenbach, 'Namibia - the release of political prisoners revisited', *ibid*, 15 (1989-90).
16. *Official Gazette of South West Africa*, 24.04.89.

17. The opinion of British barrister John Macdonald was that the draft proclamation for the registration of voters was 'deeply flawed' and 'unacceptable as the basis for a free and fair election'; the draft election proclamation was criticised for, inter alia, not providing effectively for a secret ballot by, eg the Commission on Independence for Namibia, the National Union of Namibian Workers, and Macdonald; the US Commission said the draft Constituent Assembly proclamation would make 'a mockery of the election process': see generally Namibia Communications Centre, Press Clippings and Other Documents on Namibia (NCC Press Clippings), 15.08.89.
18. Foreign Minister Pik Botha frequently referred to this possibility: see, eg, his speech on the Recognition of Namibian Independence Bill in MIHouse of Assembly Debates, 14.03.90.
19. South Africa had control of Walvis Bay; it had drastically reduced its subsidy to Namibia in 1989, leaving a large budget deficit; there was an R800 million debt which Namibia owed South African financial institutions.
20. Pik Botha, quoted *Cape Times*, 15.11.89.
21. The charge that South Africa was trying to rig the election result was dismissed as 'scurrilous and irresponsible' by D Auret: 'The settlement plan for Namibia: a South African perspective' in M Hough and M van der Merwe, eds, *Namibia: current and future prospects* (Pretoria, 1989), p8. That the Department of Foreign Affairs and Military Intelligence were working to different agendas was seen most clearly on the eve of the election, when Foreign Minister Botha was fed bogus radio messages purporting to come from UNTAG and to concern a build-up of SWAPO fighters on Namibia's northern border.
22. R65 million of the DTA's budget of R72 million came from the South African government, mostly through the Namib Foundation. Some suspected this at the time; others thought the funding came from right-wing groups in South Africa and West Germany. Cf A Sparks, 'FW must have known', pp15-16.
23. See esp N Basson and B Motinga, *Call Them Spies - a documentary account of the Namibian spy drama* (Windhoek, 1989). Basson only became involved in 1989; others had tried to publicise the issue for many years before that. Cf esp P Trewheela, 'Genesis of the SWAPO "Spy-Drama" and "SWAPO and the churches: an international scandal" in *Searchlight Southern Africa*, 5-7 (1990-91).
24. Cf Basson and Motinga, *Call Them Spies*. An UNTAG mission which went in search of missing persons accounted for all but 315 persons: 'Report of the United Nations Mission on Detainees', 11.10.89, in *Preparing for a Free Namibia: elections, transition and independence. The Report of the Commonwealth Observer Group on Namibia* (London, 1989), annexure XV. SWAPO had grossly exaggerated the number of refugees and exiles in presenting figures to the UN for aid purposes.
25. Para 7 of the impartiality agreement of September 1982, which was made public in May 1989: 'Informal Check List', given in *Nation-Building: the U.N. and Namibia*, p15. Cf *Washington Times*, 14.02.89.
26. See, eg *Action on Namibia*, October 1989, pp8-9. Evidence of extensive intimidation was submitted to the Commission for the Prevention and Combating of Intimidation and Electoral Malpractices (O'Linn Commission). Koevoet was primarily a paramilitary counter-insurgency unit and not involved in ordinary policing duties. The AG justified his refusal to confine Koevoet to base and to disband it by speaking of the threat of another 'invasion' similar to that of April.
27. UNSC Resolution 640 of 1989.
28. D Lush, 'Namibian Elections - some misgivings', *Reality*, July 1989.
29. The pressure-group NPP-435 monitored the SWABC and reported critically on it. Radio was the primary source of information for the 60% of the population estimated to be illiterate. The print media were as partisan, but there was a range of papers, from the pro-SWAPO *Namibian* through the pro-DTA *Republikein* and *Times of Namibia* to papers supporting the far-right.
30. GN 90 in *Official Gazette* 5754 of 21.07.89. See *Report of the Second Observer Mission of the Commission on Namibia*, pp. 18-19 and the analysis by G Dropkin in *Action on Namibia*, October 1989, pp12-13.
31. A-G Proclamation 19 in *Official Gazette* 5740 of 30.06.89.
32. *Preparing for a Free Namibia*, ppix-xiii.
33. Ahtisaari, quoted *Front File*, December 1989, p5.
34. H Hamutenya, quoted *Southscan*, July 1991. Justice Garoeb of the UDF said the election had not been free and fair because all SWAPO detainees had not been able to vote: *Namibia Constituent Assembly Debates (NCA Debates)*, 2 vols (Windhoek, 1990), 1, p7 (21.11.89).
35. The election results are to be found in, eg, *Nation-Building: the U.N. and Namibia*, p130. Members of Koevoet were moved to the Western Transvaal in January/February 1990: *Weekly Mail*, 04.10.91; *Sunday Times*, 06.10.91, p11.

36. J Lindsay, in *Southern African Report*, 3 (1990), p6.
37. *NCA Debates*.
38. *Ibid*, eg p195.
39. AG Proclamation 62, in *Official Gazette* 5854, 06.11.89.
40. SWAPO statement, 10.08.89, in NCC Press Clippings.
41. *NCA Debates*, vol1 (21.11.89).
42. The constitution is reproduced in, eg, *South African Yearbook of International Law*, 15 (1989/90), pp301-61. For the making of the constitution see A Chaskalson, 'Namibian Constitution' *Monitor*, April 1990; G Erasmus, 'Die Grondwet van Namibie. Internasionale Proses en Inhoud', *Stellenbosch Law Review*, 13 (1990), and for a critical view Bruce Fein, 'Chunks in Namibia's Constitution', *The Washington Times*, 08.05.90. It contained 'little in the way of conciliatory institutions': D Horowitz, *A Democratic South Africa?* (Cape Town, 1991), p280.
43. *NCA Debates*, vol2 (Windhoek, 1990).
44. See eg S Johns and H Davis, eds, *Mandela, Tambo and the African National Congress* (New York, 1991), p 207 and doc 43.
45. Eg A Johnson in *Cape Times*, 15.11.89.