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ANGOLA AND NAMIBIA

Human rights abuses in the border area

March 2000

SUMMARY

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In December 1999 the Namibian government permitted the Angolan army to mount attacks from Namibian soil against the forces of the *União Nacional para a Independência Total de Angola* (UNITA), National Union for the Total Independence of Angola. Since then armed UNITA groups have repeatedly launched attacks into Namibia, killing and abducting civilians. In dealing with the situation, both Angolan and Namibian government have carried out human rights violations.

This is a volatile area where the borders of Angola, Botswana, Namibia, Zambia and Zimbabwe almost meet, where certain groups are seeking autonomy, where families are divided by frontiers and where refugees fleeing from conflict and economic hardship cross from one country into another. Human rights abuses could increase the potential for further conflict.

Tension in the area had risen a year earlier in Namibia's eastern Caprivi region when the actions of security personnel carrying out identity checks among the Mafwe ethnic community led to an exodus of more than 2000 refugees to Botswana. In August 1999 the secessionist Caprivi Liberation Army (CLA) attacked the regional capital, Katima Mulilo. This was followed by arrests and torture by Namibian security forces.

Amnesty International researchers visited Namibia, including the border area, for two weeks in January and February 2000 to inquire into the reports of human rights abuses. They met victims of human rights abuses, human rights workers and other people. They also spoke to police officials. This report includes their findings.

The *Forças Armadas de Angola* (FAA), Angolan Armed Forces, in cooperation with Namibian forces, particularly the Special Field Force (SFF) paramilitary police, have committed human rights violations on both sides of the Okavango River -- which forms the border between southeastern Angola and much of northeastern Namibia -- against those suspected of being UNITA rebels or UNITA sympathisers.

Civilians have been extrajudicially executed. In one instance in December 1999, several witnesses on the Namibian side of the river watched a group of men on the other side being led away behind some bushes and then heard shots. UNITA has also carried out deliberate and arbitrary killings, notably in an attack on the Angolan side of the border at Santa Clara on 6 February 2000.

Other people have been beaten or tortured, most reports being attributed to the SFF. Some people are missing and may have "disappeared". On the Angolan side, villagers fled to Namibia in November and December as the Angolan government troops advanced. Some, suspected of assisting UNITA or of being illegal immigrants, have been handed back to the Angolan authorities apparently in contravention of normal deportation procedures and without being given the opportunity to request asylum.

Armed bands usually identified as UNITA forces have attacked villages in northern Namibia and carried out indiscriminate and also deliberate and arbitrary killings. Further east, in Caprivi, following the CLA attack on Katima Mulilo on 2 August 1999, over 300 people suspected of being involved in the attack were arrested and many of them were reportedly tortured by Namibian police.

Amnesty International considers that unless there is rigorous respect and protection for human rights, the violence will increase. Both Angola and Namibia have acceded to international human rights treaties and are also bound by the human rights provisions in their own constitutions. The organization urges both governments to undertake thorough, independent and impartial investigations into the human rights violations outlined in this report with a view to bringing those responsible to justice. The opportunity to stem the tide of abuses exists. It must be seized immediately.

KEYWORDS: MILITARY1 / NON-GOVERNMENTAL ENTITIES1 /
INDISCRIMINATE KILLING / EXTRAJUDICIAL EXECUTION / POLITICAL
BACKGROUND / REFOULEMENT / DEPORTATION / TORTURE/ILL-
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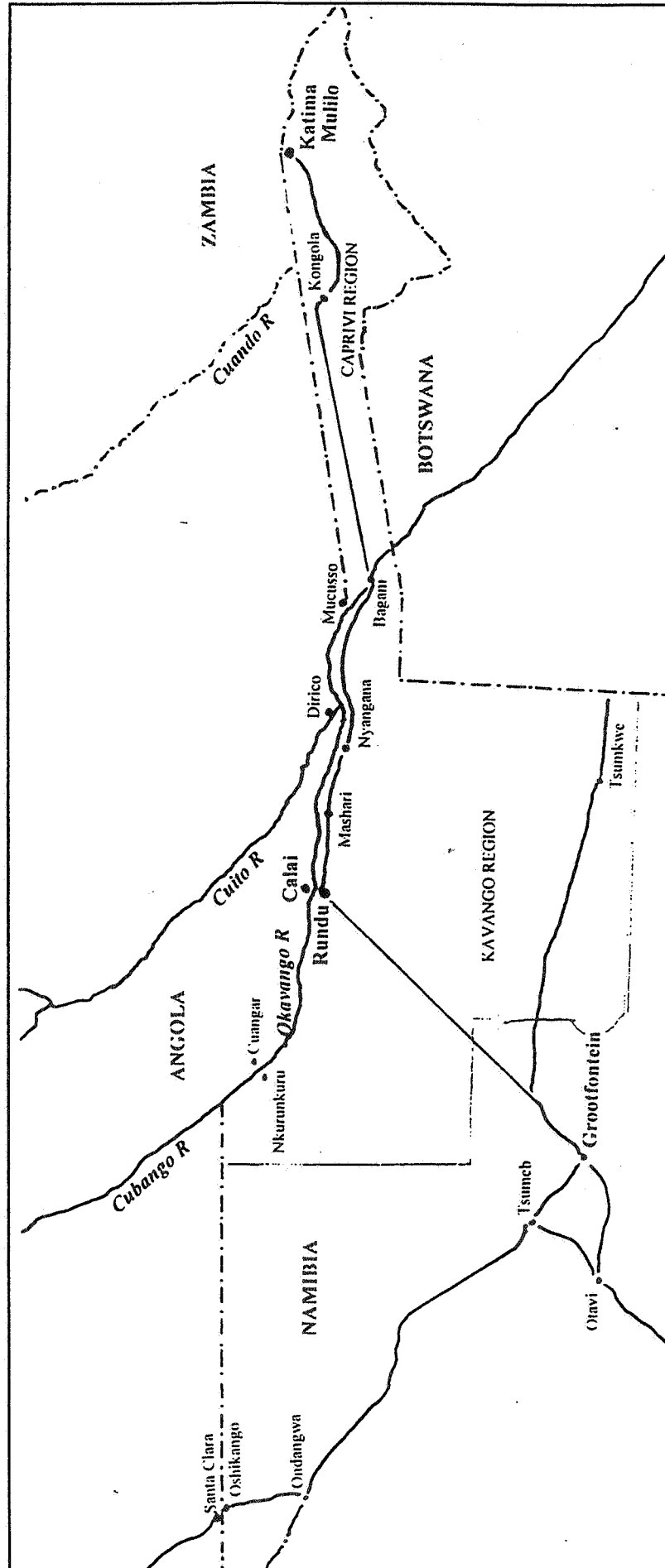
Human rights abuses in the border area



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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

THE BORDER AREA



ANGOLA AND NAMIBIA

Human rights abuses in the border area

Introduction

Since December 1999 reports of human rights violations and abuses along the border between Angola and Namibia have markedly increased. In December the Namibian government permitted the Angolan army to mount attacks from northern Namibia into Angola against the forces of the *União Nacional para a Independência Total de Angola* (UNITA), National Union for the Total Independence of Angola. The human rights violations committed by both Angolan and Namibian government forces in dealing with the security situation as well as abuses by UNITA¹ have contributed to the violence.

This is a volatile area where the borders of Angola, Botswana, Namibia, Zambia and Zimbabwe almost meet, where certain groups are seeking autonomy, where families and ethnic communities are divided by frontiers and where refugees fleeing from conflict and economic hardship cross from one country into another.

Tension in the area had risen in December 1998 in Namibia's eastern Caprivi region, when the actions of security personnel carrying out identity checks among the Mafwe ethnic community led to an exodus of more than 2000 refugees to Botswana. On 2 August 1999 the secessionist Caprivi Liberation Army (CLA) launched an armed attack on the regional capital, Katima Mulilo. This was followed by arrests and torture by Namibian security forces.

Civilians on both sides of the Okavango River, which forms the border between southeastern Angola and much of northeastern Namibia, have been extrajudicially executed. Others have been beaten or tortured. Some are missing and may have "disappeared". Civilian life has been disrupted. On the Angolan side, villagers fled to Namibia as the Angolan government troops advanced. Some, suspected of assisting UNITA or of being illegal immigrants, have been handed back to the Angolan authorities apparently without being given the opportunity to request asylum and in contravention of national law and extradition procedures and international human rights law. On the Namibian side, villages have been attacked by armed bands which are often identified by the villagers as UNITA forces. In attacks attributed to UNITA, some people appear to have been deliberately and arbitrarily killed. Further east, in Caprivi, following the CLA attack on Katima Mulilo on 2 August 1999, over 300 people suspected of being involved in the attack were arrested and many of them were reportedly tortured by Namibian police.

Amnesty International researchers visited Namibia, including the Kavango region, for two weeks in January and February 2000. This report includes their findings.

¹ Amnesty International refers to 'human rights violations' as being those acts carried out by government forces. When similar acts are carried out by members of armed opposition groups, or when the identity of the perpetrators is not defined, the organization uses the term 'human rights abuses'. The term 'human rights abuses' is also used to include both human rights violations by governments and human rights abuses by armed opposition groups.

Background

The Angolan government has been fighting against UNITA for decades. The latest of the peace agreements signed between the two sides in November 1994 had broken down irretrievably by December 1998 and the United Nations (UN) peacekeeping force departed after its mandate ended in February 1999. In October 1999 the Angolan army succeeded in pushing the forces of UNITA, led by Jonas Savimbi, out of key towns it had occupied in the centre of Angola. Towards the end of the year government troops had advanced into the southeast of the country where, in December, they took control of UNITA-held towns and villages, after firing artillery and rockets into Angola from the Namibian side of the border.

Since the Angolan army began operating from Namibia there has been an increase in armed attacks attributed to UNITA in Namibia's northern Kavango region and in the Caprivi strip (see map). UNITA had announced that it would retaliate against Namibia for allowing the Angolan army to operate from Namibia. The attacks attributed to UNITA were carried out against villages and vehicles as well as on military bases. Many of them involved robbery and cattle rustling. In some instances people were indiscriminately or sometimes deliberately killed. It appeared that some of the armed groups included civilians, including some women, but it was often unclear whether they acted with any political intent or with any coordination, or whether they had simply resorted to armed robbery for survival. The victims of attacks frequently reported that their assailants said that UNITA would continue to attack Namibian villages so long as Angolan troops operated from within Namibia.

The violence has had a severe economic effect on the area. There had been little economic activity during the late 1970s and the 1980s when the area was under South African military occupation. Since Namibia's independence in 1990 the economy had improved. However, with the recent increase in violence the drop in tourism has led to an economic down-turn.

Since the *Forças Armadas de Angola* (FAA), Angolan Armed Forces, began operating from Namibia there have been reports that members of the Namibian Defence Force (NDF) or the Namibian Special Field Force (SFF) paramilitary police² have undertaken joint operations with the Angolan forces and that Namibian forces have crossed into Angola. UNITA representatives have repeatedly declared that Namibia's participation in the conflict justifies cross-border retaliation by UNITA. Such statements were made most recently in early February after the media reported that Namibian forces had pursued a group of UNITA members into Angola following an attack on Sheghuru village in Namibia. After a brief meeting in Luanda on 14 and 15 February 2000, Angolan President José Eduardo dos Santos and Namibian President Samuel Nujoma agreed that the two countries would "cooperate in all fields, including the military sector, so as to stabilize the situation along the border". President Nujoma said that

² The SFF is part of the Namibian police force. It is said to number over 2,000.

"the Namibian forces would remain in Namibia", adding that "the eradication of [UNITA] is purely the responsibility of the FAA forces"³.

Military cooperation between Angola and Namibia is carried out on the basis of agreements which have not been made public. Under other military agreements, and with the agreement of the Southern African Development Community, Angolan, Namibian and Zimbabwean soldiers have been fighting in the Democratic Republic of Congo in support of President Laurent Kabila. UNITA troops were reported to be fighting on the side of President Kabila's opponents.

The emergence of the CLA in 1999 is an apparently new factor contributing to turbulence in the area. However, its roots may go further back, with calls for greater self-determination, and even secession, by some of the Lozi-speaking ethnic groups in Namibia, most notably the Mafwe, as early as 1964. These demands have, in the past, been voiced more strongly on the Zambian side of the border, where the king of the Lozis lives⁴. Six of the suspected CLA supporters were arrested in Zambia in September 1999. There have also been allegations that the CLA was trained by UNITA in Angola, where there are also groups who speak Lozi languages.

It is also important to note that in northeastern Namibia, support for opposition parties is strong, as opposed to the northwest where the ruling South West Africa People's Organization (SWAPO), the former liberation movement, enjoys majority support. In Angola, the southwest has remained under Angolan government control, while the southeast was dominated by UNITA. To add to the complexity of the security situation along the border, family and ethnic groups span the frontier and people cross to visit relatives, trade or to till crops.

The conflict in the border area does not appear to conform to the definition of international conflict in common Article 2 of the Geneva Conventions. However, all combatants, including UNITA and other armed opposition groups have an obligation to respect common article 3 of the Geneva Conventions which forbids, with respect to all those taking no active part in the hostilities, "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" and "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples".

³ Angola Press Agency. 15 February 2000.

⁴ Before the colonial powers defined country borders at the end of the 19th Century, the Lozi or Barotse kingdom stretched over an area which included parts of present-day Botswana and Namibia and a larger part of present-day Zambia.

Both Angola and Namibia are parties to the Geneva Conventions⁵. They are also parties to other important international treaties which protect human rights including the International Covenant on Civil and Political Rights (ICCPR)⁶, the African Charter on Human and Peoples' Rights (African Charter)⁷ and the UN Convention relating to the Status of Refugees (the UN Refugee Convention)⁸. Angola has ratified and Namibia has reportedly begun the process of adhering to the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa⁹. Namibia, but not Angola, has also ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁰. Both countries have ratified the UN Convention on the Rights of the Child¹¹ but neither has ratified the OAU African Charter on the Rights and Welfare of the Child.

Reports of extrajudicial executions by FAA

The FAA captured the Angolan border town of Cuangar on 23 November 1999. From there they pushed on to Calai, Angola, which they captured on 10 December. Early reports from the area to the east of Calai suggested that the FAA had carried out extrajudicial executions. Eyewitnesses on the Namibian side of the river about 20 kilometres east of Rundu recounted how, on 14 December, they had seen a group of men led off behind bushes by Angolan soldiers and later heard shots. They also saw two other groups of people, including women and children, being led off in other directions. A few days later journalists crossed into Angola taking a video camera. They filmed bodies which had begun to decompose in the intense heat. They said they had seen six bodies in two groups of three each not far from the village of Halukombe. One of the victims appeared to have a bullet hole



The Angolan town of Calai photographed from Rundu in Namibia. © AI

⁵ Angola acceded to the four Geneva Conventions and to additional Protocol I on 20 September 1984. It had acceded to additional Protocol II on 23 May 1979. Namibia acceded to the conventions and both additional protocols on 17 June 1994.

⁶ Angola and Namibia acceded to the ICCPR on 10 January 1992 and 28 November 1994 respectively.

⁷ Angola and Namibia acceded to the African Charter on 9 October 1990 and 26 September 1992 respectively.

⁸ Angola and Namibia acceded to the UN Refugee Convention on 23 June 1981 and 17 February 1995 respectively.

⁹ Date of ratification by Angola: 3 December 1982.

¹⁰ Date of ratification: 28 November 1994.

¹¹ Angola and Namibia ratified the convention on 30 June and on 5 December 1990 respectively.

in the forehead. The journalists also observed signs indicating an attempt to burn the bodies. These bodies have not been identified. They may, or may not, be connected with the reported extrajudicial execution of 11 men which occurred at about the same time in about the same area. Another person who crossed into Angola in late December is reported to have seen a larger group of bodies, including those of women and children. Other witnesses also reported a site where there were "many" bodies.

Eyewitnesses in the Sambyu district in Namibia told Amnesty International that early on Saturday 11 December 1999 they heard shooting and, later that day, watched villagers from Mangarara, a village close to Halukombe, cross over the Okavango River to Kayengona village, in the Sambyu area of Namibia. The majority of the group were women and children. On the Namibian side, FAA soldiers and SFF personnel separated six men from the women and children. The six were Tifwaku Kakuni, Tjivava Kalimbwe, Ngondo Likolo, Ndala Likuwa, Tjameya Muyenga and Kameja Vihemba. On the same afternoon, the men were taken away in a closed police truck. The women and children were ferried in groups in an open police truck to the refugee transit camp in Rundu. Two young women said that on their journey to the transit camp they had passed the closed police truck carrying their father and other men. It had stopped near an open-air market just outside Rundu. They never saw their father again. He and the other men were apparently handed over to the FAA in Rundu and taken across the river to Angola and then to Mangarara.

Other witnesses said that villagers from Mangarara, including people who had remained in Angola and men who had been forcibly returned to Angola, were taken to Halukombe village (or Rukombe as it is called in another local language). There, according to these witnesses, 11 men were lined up in front of the local chief, Peregrina Ntero Sindjamba (a woman), and shot. Witnesses said that they believed the executions took place on 12 December. One of the victims was chief Ntero Sindjamba's son, Norbert Ndumba Mawano, and another, Johannes Shiyave, was her brother. 'Many' Angolan soldiers were said to have been involved in the executions and some were later seen in items of clothing taken from the dead men.

Reports of these extrajudicial executions by journalists and the National Society for Human Rights (NSHR), were published in December 1999.

Amnesty International was informed that on 20 January 2000 the Namibian police, accompanied by an Angolan officer, made inquiries among relatives of the victims living on the Namibian side of the river. The purposes and results of their inquiry have not been made public.

An Angolan soldier killed Thaddeus Mubili, a Namibian citizen, in Mushangara, West Caprivi region, on 22 January 2000. The killing appears to have been an extrajudicial execution. According to various reports, a group of people suspected of being UNITA members surrounded the village on the night of 21 January, rounded up cattle, gathered other items and forced villagers to assist them as porters. Other villagers fled and reported the incident to the

security forces. Security force personnel visited the scene later that night, found a young village boy who had been injured by a landmine and took him to hospital. The next day SFF police accompanied by FAA soldiers returned to the village. There, they found that eight of the villagers who had accompanied the attackers had returned with a message to the effect that UNITA had carried out the attack in retaliation for Angola being allowed to launch attacks against UNITA from Namibia.

The FAA soldiers asked Thaddeus Mubili, a community game warden, to help them follow the tracks left by the attackers on the gravel road as they returned to the river. On the way, a FAA soldier was seriously injured after accidentally detonating a landmine. Other FAA soldiers reportedly surrounded Thaddeus Mubili, and, accusing him of knowing about the mine, beat him and then shot him dead. Angolan soldiers reportedly told the SFF who subsequently arrived at the scene of the shooting: "we have killed a rebel". According to police officials, the Angolan soldier responsible for the shooting was arrested. In early March Amnesty International was continuing to seek information about progress in bringing those responsible to justice.

The Angolan Constitution, in Article 20, lists the right to life among other rights to be protected. Article 21 enlarges this protection by stating, in paragraph 2, "Constitutional and legal norms related to fundamental rights shall be interpreted and incorporated in keeping with the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and other international instruments to which Angola has adhered." The ICCPR, Article 6, says that "Every human being has the inherent right to life. ... No one shall be arbitrarily deprived of his life." Extrajudicial executions by members of the FAA thus violate not only the Angolan Constitution but also international human rights treaties which Angola has undertaken to respect.

Indiscriminate shooting by Namibian security forces

Namibian forces have apparently arbitrarily killed and caused injury to civilians through excessive use of force. In two of the following cases the authorities have reportedly arrested those suspected of responsibility. A third case was reported to the police but the complainants did not know what action had been taken.

Early on Monday 10 January a six-year-old girl was shot dead by an NDF soldier. A man was shot in the buttocks and injured in the same incident. A group of Angolans and Namibians, apparently members of a family group which spans the river, had reportedly crossed into Namibia near a hotel or 'lodge' 16 kilometres west of Rundu at about 3 o'clock that morning. The presence of the group aroused suspicion and the NDF was summoned. According to witnesses, the soldiers arrived at about 6 o'clock that morning and started shooting without due care. The group subsequently told journalists that they had crossed the river from Sididi in Angola after FAA soldiers raided their cattle. At least two of the group were Namibians from

Kasote village near Rundu who tilled *mahangu* (pearl millet) fields in Angola on a seasonal basis.

A murder investigation is taking place into the death of Mpengu Haininga on 27 January 2000 in Sheghuru village, 75 kilometres east of Rundu. According to official sources an SFF officer shot and killed him as he tried to escape. Mpengu Haininga had reportedly been arrested after he failed to produce identity documents.

Muyeva Thaddeus Munango was shot and wounded in the Sambyu district east of Rundu on 4 February 2000. According to a report by the NSHR, he had been fishing in the Okavango River when a member of an SFF patrol ordered him to come out of the water. An SFF police officer then fired at him and he lost consciousness and fell where he had been standing. Apparently supposing Muyeva Thaddeus Munango to be dead, the SFF troops picked up his shoes, which he had left on the river bank, and took them to the village where they told villagers: "We have killed a UNITA bandit"¹². Muyeva Thaddeus Munango, according to the report, had been shot in the right hand and left leg and, after regaining consciousness, managed to limp home. The villagers took him to hospital and reported the incident to the police.

In early March Amnesty International was continuing to seek information about what action was being taken to bring to justice anyone suspected of being responsible for indiscriminate killing and injury.

Killings by UNITA

Many attacks involving killings were attributed to UNITA. Many appeared to include an intention to spread terror. People have also been maimed or killed by landmines the attackers left to deter pursuit. The following incidents, in which the attackers were identified as UNITA, included what seemed to be deliberate and arbitrary killings.



Residents abandoning Thikanduko after the UNITA attack. © AI

Thikanduko village in northeastern Kavango region was attacked by an armed group on 21 January 2000. Villagers said

¹² NSHR press release 13 February 2000.

that the group had come from a village on the Angolan side of the river which is clearly visible from Thikanduko. The villagers said that they knew four of the attackers by name as UNITA members because they used to cross into Namibia to shop and receive medical attention. One was said to have a metal prosthesis which ended in a point, rather than a shoe, and which left clearly identifiable marks in the earth.

During the attack, the assailants had shot through the locked door of the house of a 27-year-old primary school teacher, Mukwata Kolinus Faniso, then entered the house firing. They killed the teacher and badly injured his wife. Jan Kavura Thikoko, aged over 70, emerged from his house to see what was happening. The attackers reportedly asked his name and, after he replied, shot him dead at point-blank range. In a nearby homestead, another elderly man, Kushamura Kapinga, was also killed and another teacher narrowly escaped detection and possible death because his wife hid him in the bedding. After the attack the villagers abandoned their homes and went to live in the bush some distance to the south where attacks were less likely but where living conditions were precarious.

Twenty-eight people were killed and 42 injured when a large UNITA group, armed with machetes, guns and bayonets, attacked Santa Clara, on 6 February 2000. The victims included men, women, old people and children. Santa Clara is a trading centre in Angola immediately opposite the Namibian town of Oshikango, about 400 kilometres west of Calai and Rundu. There is a camp there where people who are deported from Namibia or who enter Angola without identification documents are reportedly held. Survivors taken to hospitals in Namibia told journalists that the attackers had said that they had come to the town to search for 81 UNITA members who had been arrested in Namibia and were reported to have been handed over to the Angolan authorities on 2 February (see below, page 11). People who are deported from Namibia are normally handed over to the Angolan authorities at the Oshikango border post.

An armed group identified as UNITA reportedly killed three people and burned nine houses when they attacked Shinyungwe village, about 125 kilometres east of Rundu, on the night of 16 February. Sigbert Mahina, an elderly man, was shot and killed as he emerged from his burning house. His wife Suse Tjarura and son, Samende Shikongo, who may also have been shot, were unable to escape and died in the burning house. Another son, Haingura Sigbert, was shot in the arm. The group then burned other houses, three of which were reportedly owned by Ovambo people, a group from which SWAPO largely draws support. Local people said that the attackers, numbering over 80, included at least six Namibians. As a result of this incident, people in the area abandoned their homes during the night and slept in safer areas.

Forcible return

Namibian authorities appear to have breached both national and international law, including the UN Refugee Convention, in their manner of dealing with refugees fleeing the fighting in Angola.

In February 2000 there were about 8,500 Angolans in Osire Refugee Camp, 200 kilometres north of Windhoek, the capital of Namibia. Some 2,500 of them, mostly women and children, arrived in November and December 1999. A group of women complained that their husbands, who had been separated from them after they crossed into Namibia, and whom they expected to meet again in Osire, did not arrive in the camp. They said they feared that the men may have been handed over to the Angolan army. The missing men are mostly from Angola's central highlands where UNITA drew much of its support. The country representative of the UN High Commissioner for Refugees said in February that the organization had given the Namibian authorities a list of 50 men reported missing in November and December and that the authorities, including those responsible for defence and security, were investigating the matter.

Accounts of the way in which the authorities dealt with people who fled across the Okavango River since December 1999 suggest a pattern of cooperation between the Namibian police and members of FAA and the selection of some of the refugees for forcible return.

A 59-year-old victim of forcible return (name withheld) explained how he fled from Calai after cannon fire, shells and light arms were first heard on the morning of 9 December 1999. People fled in panic. The man, his wife and family fled east along the river and managed to cross into Namibia on the night of 10 December. On the Namibian side the victim and eight other men were separated from their families and taken in a police truck to a place surrounded by barbed wire where they waited for transport to the refugee camp. They were then put in another vehicle with what were described as security personnel and taken to a Namibian barracks where they were questioned. The nine men were then taken in another police vehicle by people in civilian clothes to a camp where there were heavily armed Angolan soldiers. At least two of the group were badly beaten on arrival. On 12 December the men were taken back to Calai. The victim managed to escape to Namibia. While in Calai, he had seen the two men who had been badly beaten but he did not know what became of the other six.

João (full name withheld), a refugee who fled from Angola in December 1999, said that on arrival in Rundu's transit camp for refugees, people in civilian clothes encouraged male refugees to get into a truck which, they were told, would take them to where their asylum claims would be processed. João failed to get a place in the truck but an

acquaintance did succeed. João, now in Osire Refugee Camp, has not seen his acquaintance again.

According to other reports over a dozen men were taken from Osire by Angolans who promised them work on farms in Namibia. They were then reportedly taken to Angola, to a military barracks in Cunene province, to be conscripted into the army. Some subsequently escaped and returned to Namibia where they recounted their experience.

Betty (full name withheld), her boyfriend Ernesto Kavimbi and other family members fled from Kakuchi in Angola into the Mukwe area of Namibia in December 1999 and made their way to Rundu. On 15 December, she and Ernesto Kavimbi were among many people rounded up in Rundu and detained as illegal immigrants. They were taken first to a detention centre at Muralani, about 120 kilometres southwest of Rundu, and then to Oshikango on 22 December when they were handed over to the Angolan police. Betty was not given the opportunity to seek asylum or contest her deportation. On the Angolan side of the border she was held in a reception camp in Santa Clara. She managed to obtain an Angolan Safe Conduct document and returned to Namibia where she told her story to the NSHR. Betty said that Ernesto Kavimbi had disappeared from the camp on 26 December: she believed he had been recruited into the Angolan army.

The above accounts indicate a disturbing pattern of failure to respect the most basic rights of refugees. The UN Refugee Convention describes as a refugee someone who, "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ...". A person becomes a refugee as soon as his or her situation falls under this definition, that is, before any determination is made about her or his status in the country of refuge. The Namibian Constitution, Article 97, states that as a principle of state policy, "The State shall, where it is reasonable so to do, grant asylum to persons who reasonably fear persecution on the ground of their political beliefs, race, religion or membership of a particular social group".

It appears that some of the refugees who fled from the conflict in Angola in recent months have been subjected to *refoulement* by the Namibian authorities. The principle of *non-refoulement* set out in Article 33 of the UN Refugee Convention forbids the forcible return (*refoulement*) of any person to a country where "his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". The principle of *non-refoulement* also obliges a state to undertake the responsibility of identifying individuals in need of protection. To forcibly return people who express a fear of human rights violations if forcibly returned, without any consideration of the merits of their case, is a clear violation of this *non-refoulement* principle.

In the case of any refugees who are suspected of being UNITA members or criminals who pose a security risk to Namibia, the authorities should still take full account of their obligations under the *non-refoulement* principle. While there is a provision in the UN Refugee Convention which states that in a particular case the principle of *non-refoulement* may be suspended with respect to a person whom there are reasonable grounds for regarding as a danger to the security of the host country, any state seeking such an exception must demonstrate through compelling evidence that the individual poses a clear danger to the host country and such evidence must be evaluated through an independent and impartial procedure.

In any case, Namibia is a party to the UN Convention against Torture which contains no such exception. In Article 3, the convention states that "[n]o State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". To determine whether there are such grounds "all relevant considerations" should be taken into account, including "the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights"¹³. The authorities appear to have ignored these treaty obligations.

The OAU Refugee Convention states in Article 11: "No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened...". Namibia has reportedly initiated the process of acceding to this convention and should therefore be guided by it.

Forcible deportation of prisoners

The NDF paraded 81 prisoners in Rundu on 20 January 2000, saying that they were UNITA members who had been arrested while carrying out crimes such as robbing shops and cattle rustling. One, Domingos Adão, told journalists that he had been arrested on 17 January in Mabushe, Namibia, 65 kilometres east of Rundu. He said that UNITA combatants were starving and faced either surrender or crime. The Ministry of Defence said that the 81 would be handed over to the Angolans. In early February it was reported that the prisoners had been deported to Angola. It is not clear whether they were deported as illegal immigrants. If so, it was unclear whether their cases were dealt with by the Immigration Tribunal¹⁴ and whether they were given an opportunity to challenge their deportation as required under Namibian law.

The whereabouts of a detainee feared to have been illegally deported has been traced. The NSHR reported¹⁵ that the family of Domingos Feliciano Simbandua had no news of him

¹³ Amnesty International has documented a consistent pattern of violations: see, for example, *Angola: Human rights - the gateway to peace* (AI Index: AFR 12/01/99)

¹⁴ In late February 2000 the Namibian authorities invited the UNHCR to participate in the Immigration Tribunal as an observer.

¹⁵ Press release, 17 February 2000

after his apparently arbitrary arrest by more than eight SFF police on 13 January 2000. His family, living in the Sambyu area, told NSHR that the reason for his arrest appeared to be that he was an Angolan. He spoke Kimbundu, the language mainly used by UNITA members. He had lived in Namibia since 1969 and had married a Namibian in 1972. In late February the NSHR discovered that he had been taken to the Oshikango border post where deportations usually take place. He had then sustained two gunshot wounds and was taken to hospital in Windhoek. In early March the NSHR were continuing to make inquiries about how the wounds were caused and the legal status of Domingos Feliciano Simbandua.

Those arrested and detained should have been afforded all relevant rights under the Namibian Constitution and under the ICCPR¹⁶. The failure to investigate the allegations of crimes and to institute criminal proceedings in the normal way denies them these rights, particularly the rights to be represented by defence counsel and the right to contest the legality of their detention. Article 7 of the Namibian Constitution states that "no person should be deprived of personal liberty except according to procedures established by law." Article 11 prohibits arbitrary arrest and detention and requires that any person arrested and detained should be brought before a magistrate or other judicial officer within 48 hours of their arrest and that the person should not be detained in custody beyond such period without the authority of a magistrate or other judicial officer. Article 11 (4) states that illegal immigrants cannot be deported unless deportation is authorized by a tribunal. Article 11 (5) requires that illegal immigrants have access to a lawyer. Furthermore, Article 12 of the constitution entitles everyone to a fair trial in "the determination of their civil rights and obligations or any criminal charges against them".

The failure of the Namibian authorities to bring the Angolan detainees promptly before the judicial authorities, to afford them access to lawyers and to try them before Namibian courts for the crimes they are alleged to have committed violates Articles 9 and 14 of the ICCPR and articles 6 and 7 of the African Charter. The African Commission on Human and Peoples' Rights (African Commission), which oversees implementation of the Charter, has rendered several decisions in which it has stated that the deportation of nationals of another country without the opportunity to challenge their detention or deportation is in violation of Article 7 of the African Charter. The African Commission also pointed out that Article 12(5) of the African Charter specifically prohibits the mass expulsion of non-nationals and stated that mass expulsion was a special threat to human rights¹⁷.

¹⁶ Namibia has not declared any state of national defence or emergency and therefore the provisions of the Constitution and the ICCPR apply without exception.

¹⁷ See (i) Rencontre Africaine pour la defense des Droits de l'homme / Zambia, 71/92, 10th Annual Activity Report of the African Commission on Human and Peoples' Rights 1996/97, DOC.OS/(XXII); (ii) UIDH, FIDH, RADDHO, ONDH and AMDH Angola, 159/96, 11th Annual Activity Report of the African Commission on Human and Peoples' Rights, 1997-98, DOC/OS/43 (XXIII).

Abductions by UNITA

On 31 December 1999, official sources reported that UNITA had abducted 20 people after attacking a grocery shop in Bagani, western Caprivi. Angolan soldiers found the victims a few days later inside Angola. In many other reported attacks since December, UNITA is said to have forced people to act as porters of looted goods. On many occasions villagers were allowed to return home after acting as porters but some have been abducted.

Claudia and Christine Munango, aged 19 and 14 respectively, were taken to Angola by an armed group, later identified as UNITA, which raided Kugoma village in Rundjarara district on 28 January. A group of six men, including two in plain green uniform and carrying guns, arrived in the village late in the night, firing their guns. They beat people, including three children, and took clothes, bedding, food and cooking utensils as well as cattle. They demanded that the family (10 people) help to carry the looted goods to the riverside. The attackers ordered Claudia and Christine to get into the *wato* (canoe) or risk being shot. They told the family that UNITA would soon attack the area because FAA had been allowed into Namibia to launch attacks against UNITA. The group also said that they would come back to fetch the rest of the Munango family. According to villagers, on the day after the raid police reportedly arrested a man in army uniform whom they suspected was one of the attackers. Residents of Rundjarara and nearby Ndongalinene later staged a demonstration calling for greater security in the area, where some villagers had been too afraid to sleep in their houses. A relative of the two girls reportedly saw them inside Angola in the second week of February and on returning to Namibia said that they were alive but "they cry every day".

Torture and ill-treatment:

Amnesty International representatives heard numerous reports of beatings. Many were attributed to SFF members and others to FAA and UNITA. Earlier, there had also been reports of the torture of suspected Caprivi secessionists arrested following the attack on Katima Mulilo on 2 August 1999 (see below). Torture and ill-treatment breach the clear prohibition of torture in Article 8 (2) (b) of the Namibian Constitution and provisions of international treaties such as the UN Convention against Torture.

According to the accounts of villagers and people living in Rundu, SFF personnel routinely beat those they stopped during identity checks. Those without documents who were taken to police stations were also reported to have been beaten. There were several reports of people being beaten with gun butts or severely kicked. In one case, in January 2000, an SFF member was seen repeatedly hitting a young boy with the butt of his gun and kicking him. The boy had tried to cross the river in a *wato*, apparently in an attempt to retrieve cattle.



Pauline Nankero © AI

Erkki Fiderato, known as 'Sikeletu', was arrested on 7 January at his home in Utokota village in the Sambyu area. The SFF personnel who arrested him reportedly kicked him "for a long time" and beat him with rifle butts before taking him to their base close to Utokota village. Villagers told journalists that they had heard Erkki Fiderato screaming during the night. His wife, Pauline Nankero, said that she had visited him in custody the next day, that her husband told her he had been beaten with an iron bar and that he not been given any reason for his arrest. Later that day Erkki Fiderato was taken away in a police vehicle. There was a subsequent report that Erkki

Fiderato, who had been born in Angola but had lived in Namibia for many years, may have been handed over to the Angolan army at Calai.

Amnesty International later learned about the incident from Pauline Nankero and other villagers. They told Amnesty International that the police in Rundu had been notified of the apparently arbitrary arrest but had neither questioned witnesses nor informed the family of any action they may have taken to establish his whereabouts or investigate the reports of torture. Initially it seemed that Erkki Fiderato had "disappeared" in custody. However, in March Amnesty International was informed that he had been seen at a military base near the Rundu airport and was apparently working there.

António (full name withheld), an Angolan who had come to Namibia for medical treatment, was arrested in Rundu on 28 January 2000. He was taken to an SFF base near the airport where men who fail to show identity documents are detained. There he was kicked so hard in his left kidney that the SFF, apparently fearing for his life, took him to the refugee transit camp in Rundu. Refugee workers immediately took him to hospital. Amnesty International interviewed him and he explained that he was a FAA veteran who had been partially blinded by a smoke grenade which UNITA fired into his unit in Angola in 1994.

Kamungwe Ngondo, aged 25, a farmer, was arrested on 3 February after failing to show his identity document. SFF members took him to the SFF base at the airport and beat him with a *sjambok* (whip) on his back and chest. He was held there for two weeks. After his release he showed human rights workers scars from the beating. He told them that prisoners were routinely beaten in the mornings before they tidied their sleeping area.

Angolan troops were also reported to have carried out beatings in violation of the Angolan Constitution and international human rights treaties. Several young Namibians who had been tempted by promises of large sums of money to cross into Angola and join FAA said that they had seen trainee soldiers being beaten for disciplinary offences. Simon (full name

withheld) had been on patrol by the river on 19 December 1999. His companion saw a large fish and shot at it. Other FAA soldiers came up to see what had happened. The unit commander made the two trainees remove their clothes and shoes, sit on the ground and grasp their knees. Simon said he had been leading the patrol and therefore received five lashes. His companion received one lash. He said that the soldiers used a whip over a metre long made of twisted pieces of red and black plastic. Over four weeks later, two scars were clearly visible.



Scars on Simon's back ©AI

Angolan soldiers were also reported to have tortured young women by raping them. According to one report, soldiers based in Angola crossed the river and asked girls to accompany them but if the girls refused the soldiers used force.

As noted above, UNITA gangs are reported to have beaten people, including children, during raids on their villages. Owing to the difficulty of obtaining information from UNITA-held areas, reports of torture and other abuses often take time to emerge. Amnesty International interviewed one person who had escaped from a UNITA-controlled area in December 1999 who explained how he had been tortured several years earlier because he was suspected of spying on behalf of the Angolan government. The torture included holding him for three months in a sweltering underground cell infested with mosquitos and other insects. He was blindfolded and made to place his neck on a log of wood and listen to the sound of machetes being sharpened. He was also buried in sand and pulled out just as he felt his lungs were about to burst. In carrying out torture and ill-treatment UNITA is in violation of common Article 3 of the Geneva Conventions.

Caprivi secessionists

The Namibian security forces are reported to have beaten and tortured many of those arrested in connection with the attack on Katima Mulilo on 2 August 1999.

The CLA was officially reported to have aimed attacks at the police headquarters, the Mpacha Defence Force base, the Namibian Broadcasting Corporation building and the Wenela immigration post. Initially it was reported that 14 people had been killed during the fighting but later it was confirmed that seven had died. On the same evening President Nujoma declared a state of emergency which lasted until 26 August.

The response to the attacks by members of both the army and the police reportedly included torture. Of the more than 300 people arrested, most complained of torture at the time of their arrest and during interrogation. In some of the worst torture cases, injuries were

documented in medical reports. They were also documented by defence lawyers who took photographs. During bail hearings in September and October 1999, several of the detainees took off their shirts in court to show clearly visible marks which they claimed were the results of torture. By the end of January 2000, 35 others who had been released uncharged had filed complaints of torture and demands for compensation. Three police officers who had been named by many detainees as perpetrators of the torture were still on duty in late February.

On 24 January, the 111 people detained on suspicion of committing high treason and four others who had been released on bail, appeared before the High Court in Grootfontein. They were remanded in custody until 31 July pending further investigations.

Child soldiers

Amnesty International representatives saw Angolan soldiers whose size and youthful appearance suggested that they were well below the Angolan military age of 20. They even appeared to be less than 18 years old¹⁸. One was among eight trainees drinking at a *Cuca* (beer) shop in Mashare on the Namibian side of the river on 26 January, all wearing plain dark green uniforms with "FAA" on their breast pockets. Paulus Nondoro was 17 when he joined FAA in December 1999. He absconded, with others, in January.

UNITA forces include children under 18 years. It is reported that young children abducted during UNITA raids and brought to UNITA's headquarters at Jamba in southeastern Angola were housed with families who used them as labourers and sometimes given schooling before they were conscripted into UNITA's forces.

Recommendations

The above reports indicate that members of both the FAA and the SFF have carried out violations of human rights with impunity. It is incumbent on the governments in both countries, particularly the military and police authorities, to ensure that all security force personnel are made fully aware of their obligations under national and international human rights law and under international humanitarian law.

Amnesty International is calling on both the Angolan and Namibian Governments to investigate specific incidents or patterns of human rights violations. Some of the inquiries require collaboration between the Namibian and Angolan authorities¹⁹. The inquiries should fulfil the following criteria:

- They should be, and be seen to be, independent and impartial;
- The results should be made public;

¹⁸ The African Charter on the Rights and Welfare of the Child sets 18 as the minimum age at which minors may be conscripted into the armed forces.

¹⁹ In this context it is relevant to note that Article 96 (d) of the Namibian Constitution requires that, with regard to foreign relations, Namibia "fosters respect for international law and treaty obligations".

- The inquiries should be undertaken with a view to bringing to justice any member of the armed forces who is suspected of perpetrating human rights violations, including senior officers responsible for the conduct of those who carry out the violations;
- They should also be mandated to make recommendations about the training or re-training of security force personnel and any other officials whose duties include dealing with refugees to ensure that they are aware of and are able to put into practice procedures which adequately protect human rights.

Amnesty International is also urging the Ombudsman's Office in Namibia and the Human Rights Division of the UN Office in Angola (UNOA) to undertake independent investigations and to make appropriate recommendations to the authorities.

In particular, Amnesty International is calling for independent and impartial inquiries into the following incidents or patterns of action which involve human rights violations.

Extrajudicial executions and excessive use of force

- **The Angolan authorities** should order an independent and impartial investigation into the alleged extrajudicial execution of 11 people by FAA soldiers, in Halukombe, Angola, on, or shortly after, 12 December 1999. The victims appear to include men who had fled from Mangarara in Angola to Kayengona in Namibia on 10 December and were reportedly held by Namibian forces before being handed over to the FAA and taken back to Angola. Such executions violate not only national law but also international human rights treaties, including Article 6 of the ICCPR (see above, page 6). They are also war crimes which violate common Article 3 of the Geneva Conventions.
- **The Angolan authorities** should conduct inquiries into any other similar allegations of the killing of civilians by soldiers.
- Concerning the alleged extrajudicial execution by an Angolan soldier of Thaddeus Mubili on 22 January 2000, **the Angolan authorities** should cooperate as necessary with the Namibian authorities to ensure that all those suspected of complicity in the killing are brought to justice. Although the Namibian authorities said they had detained the soldier suspected of shooting Thaddeus Mubili, reports of the incident suggest that other soldiers were involved. The officer commanding these soldiers, even if not personally involved, should also be investigated with a view to determining whether he should be held responsible for any act or negligence on his part which contributed to the conduct of those involved in the incident.
- **The Namibian authorities** should ensure that all those Angolan soldiers involved in or suspected of complicity in the killing of Thaddeus Mubili are brought to justice and fairly tried.

- **The Namibian authorities** should ensure that those SFF members arrested on suspicion of killing the six-year-old girl near Rundu on 10 January and Mpengu Haininga on 27 January 2000 are given a prompt and fair trial and that any other officer suspected of complicity in these and any other killings should also be brought to justice.
- **The Namibian authorities** should investigate the reported shooting and wounding of Muyeve Thaddeus Munango in the Sambyu area on 4 February 2000 and bring to justice anyone suspected of responsibility.

Forcible return

- **The Namibian authorities** have apparently made police inquiries into the alleged forcible return of at least six people who fled from Mangarara to Namibia on 10 December 1999 who were reportedly handed over to the Angolan authorities and subsequently extrajudicially executed by Angolan soldiers. This is such a serious allegation that there must be a full, independent and impartial inquiry to establish the truth. The authorities have an obligation not to forcibly return people at risk of being subjected to human rights violations. They should bring to justice those suspected of responsibility for forcibly returning refugees. They should also take all appropriate measures to ensure that all those involved in dealing with refugees are aware of and abide by their obligations under the principle of *non-refoulement* and other provisions in the UN Refugee Convention.
- Likewise, **the Namibian authorities** should carry out an investigation into the cases of other refugees who fled across the Okavango River from Angola in recent months and who were briefly held in Namibia before being handed over to Angolan forces in Rundu.

Forcible deportation

- **The Namibian authorities** should investigate reports of the forcible deportation, particularly by the SFF, of suspected UNITA members or illegal immigrants. The authorities should ensure that no illegal immigrants are removed without adequate procedures to determine any right they may have as refugees, whether they should be brought to justice, and whether they have any claims to protection under Article 3 of the UN Convention against Torture or similar requirements in national or international law.

Possible "disappearance"

- **The Namibian authorities** should establish inquiries to determine the fate and whereabouts of people who seem to have "disappeared" including those men who should have been taken to Osire Refugee Camp with their relatives. Article 13 of the UN Declaration on the Protection of all Persons from Enforced Disappearance states

that "Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to [a competent and independent State authority ... for a prompt thorough and impartial investigation] even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation."

Forcible deportation of prisoners

- **The Namibian authorities** should carry out an inquiry into the legality in national and international law of the handing over to the Angolan authorities in February 2000 of 81 UNITA members detained in Namibia on suspicion of committing crimes. In view of concerns about how such prisoners may be treated in Angola, the Namibian authorities should inquire about the whereabouts and safety of these prisoners and allow any who express the desire to return to custody in Namibia to do so, so that their cases can be dealt with under the terms of the law. The inquiry should be mandated to recommend measures which would avoid future cases of illegal deportation of detainees.

Torture and ill-treatment

Both the Namibian and the Angolan authorities should investigate reports of torture by soldiers and police and bring to justice those suspected of committing acts of torture. The Angolan Constitution, in Article 23, states that no one "may be subjected to torture or any other cruel, inhuman or degrading treatment or punishment." The Namibian Constitution also outlaws torture and the Namibian Government has an obligation under Article 12 of the UN Convention against Torture to institute a prompt and impartial investigation in to allegations of torture, and under Article 7 of the treaty to bring to justice any person suspected of torture.

In particular:

- **The Namibian authorities** should, with regard to people arrested in connection with the attack on Katima Mulilo on 2 August 1999 :
 - suspend the police officers implicated in the torture pending the results of investigations into reports of torture;
 - publish the results of any investigation already undertaken;
 - bring to justice those suspected of being involved in torture; and
 - grant compensation to those who faced unlawful arrest and torture.
- **The Namibian authorities** should also carry out an investigation into reports of beatings and torture by SFF forces, particularly during identity checks and at centres where detainees are held, including the base near Rundu airport.
- **The Angolan authorities** should investigate reports of beatings and torture by FAA soldiers:
 - as punishments for soldiers committing disciplinary offences;
 - against the civilian population.

Child soldiers

- **The Angolan authorities** should carry out an inquiry into the presence in the armed forces of people under military age. Those who have been illegally conscripted should immediately be released from military service.

Deliberate and arbitrary killings and torture by UNITA

The great majority of deliberate and arbitrary as well as indiscriminate killings which have occurred in northern Kavango region, the Caprivi region, in addition to those in Santa Clara in southern Angola, are attributed to UNITA groups.

- Amnesty International is calling on UNITA to ensure that those under its command abide by Article 3 of the Geneva Conventions.