



LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW

SUITE 400 • 1400 EYE STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 371-1212

CABLE ADDRESS: LAW CIV, WASHINGTON, D.C.  
TELEX: 205662 SAP UR  
FACSIMILE: (202) 842-3211

**THIS WEEK IN NAMIBIA**  
Week of January 29 - February 1, 1990

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

1. Preventative Detention Dropped In a major reversal, the Constituent Assembly decided unanimously on January 31 to drop the preventative detention provisions from the draft constitution. The controversial provisions, which would have empowered the state to detain people for 30 days before review of their detention was required, had been the subject of intense local and international criticism. The provisions were scrapped after heated House debate on January 30, during which NNF President Vekuji Rukoro said the provisions were "a black spot" on the constitution and argued that Namibia did not deserve that kind of law. Similar views were expressed by the UDF's Eric Biwe, a former SWAPO detainee. Both the DTA and SWAPO, on the other hand, supported the preventative detention measures on the grounds that they would protect the state and were "a necessary evil." The House failed to reach consensus and after in camera Standing Committee debate SWAPO attorney Hartmut Puppel announced the decision "to give humankind and human rights a chance" and drop the provisions all together. The House and galleries erupted into spontaneous applause. The response was so enthusiastic that Chairperson Hage Geingob was repeatedly forced to call the House to order.

2. Independence Day Set for March 21 Applause broke out a second time that day with the unanimous adoption of March 21, 1990 as Namibian Independence Day. After hours of grueling article-by-article deliberation on the final constitutional draft, the Assembly put aside the remaining articles and unanimously accepted the March 21 resolution, proposed by SWAPO's Theo Ben Gurirab. The House and galleries cheered loudly and even the Chairperson, though calling the Assembly to order, was caught up in the spirit of the occasion and joined with the rest in laughter and applause.



### 3. The Constitution

Fundamental Human Rights and Freedoms Along with the preventative detention provisions, the death penalty has been dropped. Cruel and inhuman treatment and torture have been outlawed. The right to a fair trial and access to legal representation are guaranteed, as is equality before the law. Furthermore, in a welcome change, judgement in criminal cases cannot be given in camera in the interests of state security. The right to privacy, to education, to property and children's rights are ensured. Fundamental freedoms, including freedom of speech and the press, freedom of thought, freedom of religion, freedom of assembly and association and the freedom to withhold labor without exposure to criminal penalties have been enshrined.

Regarding women's rights, the document is drafted in gender neutral language and "it shall be permissible" in the enactment of legislation dealing with affirmative action "to have regard to the fact that women in Namibia have the traditionally suffered special discrimination." Ironically, on the same day this provision was adopted women Assembly members discovered that they are being paid less than their male counterparts. Under current laws, married women pay more tax than their husbands and tax deductions for children are awarded to the husband, not the wife.

State of Emergency Though the draft constitution outlaws preventative detention under normal circumstances, State of Emergency powers still enable the President to institute such measures. However, a State of Emergency declaration must be approved by a two-thirds majority of the National Assembly and any Emergency laws must be approved by the same majority within 14 days. In addition under any Emergency law which provides for preventative detention the detainee must within five days be furnished with a statement explaining the reasons for his or her detention and within 14 days notification of the detention must be published in the Official Gazette. Within not more than 30 days an emergency detention must be reviewed by an Advisory Board and thereafter reconsidered at intervals of not more than three months. All such detainees will be "afforded the opportunity to make representations" and access to legal representatives or the courts cannot be denied to them under any circumstances.

Derogation Article 24 on derogation provides that under no circumstances shall the state be permitted to derogate from certain fundamental rights, including the right to life, the right not to be tortured, the right to a fair trial, the right not to be detained if you are under 10, and the right to freedom of thought, of religion and of association. During the final constitutional debate freedom of speech, which includes press freedom, was added to these non-derogable rights. It appears that all non-derogable rights were further entrenched against constitutional amendment.



The Presidency and the Legislature As anticipated last week, the President (excepting the first President) will be popularly elected "by direct, universal and equal suffrage" and will have executive powers. The first President will be sworn in by the Secretary General of the United Nations on Independence Day at 12:01 a.m.. The President is empowered to dissolve the National Assembly on certain conditions, to negotiate and sign international agreements, to declare martial law and war, to appoint Ministers and Deputy Ministers (all of whom must be drawn from within Parliament), the Attorney General and, on recommendation, members of the judiciary and civil services.

Though the President has considerable power, many of his or her decisions must be approved by the Parliament, which now consists of the Assembly and the National Council formerly called the House of Review. Legislative power vests in the National Assembly which consists of 72 members elected on the basis of proportional representation and 6 non-voting members appointed by the President. Each National Assembly sits for five years. The National Council has no legislative authority, but has the power to consider, review and investigate legislation and, in its powers to withhold assent from bills, can delay the passage of legislation. The Council is composed of members elected from within the regional councils (still to be constituted) and sits for six years. As noted last week, a two-thirds majority of both houses will be required to amend the constitution (see below). Transitional provisions indicate that the National Council should be constituted within two and a half years, by which time municipal and regional elections will have been held.

The Judiciary In a major change from the previous draft, the Constitution has been declared the supreme law of the land. Judicial power vests in the courts of Namibia, which are independent and subject only to the constitution and the law. The courts will be divided into a Supreme Court, a High Court and Magistrates and lower courts. Traditional courts will also receive official recognition. The Supreme Court holds final jurisdiction in constitutional matters and the previous notion of a constitutional court has been dropped. All Judges will be appointed by the President on recommendation of the Judicial Service Commission, which consists of the Chief Justice, a Judge appointed by the President, the Attorney General and two members of the legal profession.

The National Army Though Article 116, providing for the establishment of a Namibian defense force, has been adopted without amendment, debate over this issue persists. In particular the exact composition of such a force remains at issue. While SWAPO leaders clearly favor the creation of a conventional national army and continue to pursue contacts with Britain in this regard, others are expressly opposed to this.



Both the NPF and the DTA argue that a national army will greatly strain the nation's limited resources and is unnecessary in the present situation.

Amending the Constitution As noted above, the approval of two-thirds majority of both houses will be required to amend the constitution. Should this prove impossible to achieve, the President "may" make the proposed amendment the subject of a national referendum. In this case, a two-thirds majority vote will be necessary for adoption of the amendment. This provision was subjected to approximately eight hours of debate in the Assembly, indicating not only the seriousness with which the House treats the question of constitutional amendment, but also a political difference between the two parties on the subject of the national referendum and the conditions under which it can be invoked, with the DTA supporting tougher restrictions on referenda than SWAPO. Nonetheless, the provision was adopted without alteration. For the first two years of the new government, during which time no second house will exist, the National Assembly is empowered to amend the constitution by two-thirds majority.

General Overview Some criticism of the draft persists. Most notably, the powers of the President to declare State of Emergency and Martial Law have been retained and the exact definition of a "situation in which war prevails" on which a Martial law declaration depends remains unclear. Some members continue to object to the presidential appointment of six non-voting members to the National Assembly. Should such non-elected members become Cabinet members, their appointment could conflict with the 1982 principles which expressly call for an "elected executive."

Despite these concerns, however, the draft has generally been very well received. Human rights advocate David Smuts said this week that what was emerging from the Assembly "was a particularly fine constitution of which all Namibians can be proud." The often rigorous but always respectful and good humored exchange has been exemplary and indicative of a commitment to national reconciliation. As its last action for this week, the Assembly unanimously approved the Namibian national flag, consisting of the colors of all major political parties. It will be hoisted at 12:01 a.m. March 21 when the South African flag is lowered forever. There is mounting joy and exhilaration both in the Assembly and throughout the country as the Constitution nears completion, the draft is publicly commended, and the day when Africa's last colony will become a sovereign and independent state is finally at hand.

4. Overall Security The escalating conflict in Angola and cross-border raids into Namibia continue to threaten the generally peaceful situation here. On Thursday, January 25, a



Cuban diplomat announced that the Cubans had suspended their withdrawal from Angola following a UNITA attack which left five Cubans dead and 11 injured. Questions were immediately raised as to how the suspension of Cuban troop withdrawal might affect Namibian independence, as the processes were linked in the peace accords signed in December, 1988. The unexpected arrival in Windhoek of South African Foreign Affairs Minister Pik Botha and his Angolan counterpart Pedro Van Dunem the following day fueled concern. The two Foreign Ministers joined in a secret meeting of the Joint Military Monitoring Commission (JMMC) sub-committee and would make no comment on the situation save that a full meeting of the JMMC, charged with monitoring the peace accord, would convene as soon as possible. UNITA's cross border raids into Namibia are expected to be a major agenda item, and UN forces on the border have been increased. Foreign Minister Botha temporarily allayed the general concern when he left Namibia saying he had "the feeling that everything is on track here."

In a separate but related development, talks in Ovamboland between Koevoet SWATF and former members of SWAPO's armed wing PLAN have broken down, reportedly over Koevoet and 101 Battalion accusations that the talks were "a waste of time" and that their lives were being threatened by SWAPO and its supporters. UNTAG views the Koevoet/SWATF withdrawal as "a temporary setback." According to spokesperson Fred Eckhard, similar talks organized in the Kavango region have been "very successful."

5. Police Torture Allegations: In response to allegations of police torture by two murder suspects recently held in northern Namibia, attorneys for the suspects secretly obtained a court order allowing them to search the Katima Mulilo police station where the two had been detained. On January 27, local attorney Hosea Angula, acting in a temporary capacity as Deputy Sheriff, served the order at the Katima Mulilo police station. The police commander on duty at the time aggressively refused to read the order and reportedly threw it out the window of his police van. Only contempt of court threats persuaded the extremely reluctant officer to allow the sheriff, together with the detainee and his lawyers, to pursue a three and a half hour search of the premises. No further information about the search can be published due to the terms of the court order, but the murder suspect has instructed his attorneys of the Legal Assistance Centre to lay criminal charges against the police in connection with the alleged assaults.

For more information contact:  
Gay McDougall  
Lorraine Eide  
(202) 371-1212