

Draft constitution provides pleasant surprises

THE draft constitution includes several clauses which will almost certainly make the Namibian constitution unique in Africa, if adopted by the Constituent Assembly.

A significant feature is the scrapping of the death penalty. Another important inclusion is an article which curtails the role of Cabinet officials in private financial and business activities.

The abuse of office and corruption have ruined many developing countries and brought down governments in the developed nations.

To prevent such a fate befalling Namibia appears to be a question taxing the minds of its elected representatives.

Article 41 (1) says, "No Minister may, during his tenure of office as a member of the Cabinet, take up any other paid employment, engage in activities inconsistent with his position as a Minister, or expose himself to any situation which carries with it the risk of conflict developing between his interests as Minister and his private interests."

The clause which is known to reflect the Swapo leadership's emphasis on clean government has been welcomed by legal professionals.

When approached for comment on the provisions of Article 41, Mr Dave Smuts of the Legal Assistance Centre said "it was definitely right that ministers should not be allowed to hold outside jobs or engage in business".

He said the initiative taken by the Constituent Assembly was a "positive development" because it would set the tone for clean government in the future.

"Once officials use their positions

to further private interests, corruption inevitably sets in, and there have been many unfortunate examples of this," he said.

Pointing out the effects of abuse of office, Mr Smuts said, "Corruption is something which cannot be tolerated and the law must be applicable even at the highest level of government."

He added that it was good that the provisions were embodied in the constitution itself, but that possibly it should provide for full and proper periodic disclosure of financial interests.

Well-known attorney Mr Peter Koep said the inclusion of Article 41 "was a very noble thought".

He referred to Zimbabwe's experience where he said that they had tried and failed to implement a leadership code.

The Windhoek lawyer said there was always the temptation for officials who had always had "the short end of the stick" to want to enrich themselves, and that it would take strong members of the Cabinet to resist it.

Mr Koep claimed that he was aware of several Swapo officials who had been offered directorships in companies.

Generally these offers were not based on adequate qualifications for the job but on the belief that at some stage it would be for the companies' benefit.

Mr Koep added that he could understand if some of the figures in

the liberation struggle now wanted to make money, but "they should not do it to the detriment of the country".

In fact, several other African countries, including Zimbabwe, Zambia and Tanzania, do have "leadership codes", a guideline for ministers and party chiefs on business matters.

The leadership codes in these countries are, however, not part of the constitution itself, but are only party documents dependent on party discipline for their enforcement.

The leadership codes of these countries have failed for lack of political willingness to bring the culprits to book.

In Zimbabwe, the Willowgate scandal brought to the fore how many top-ranking ministers had ignored the code, and some Zimbabweans felt some of the wrong-doers were let off too lightly.

In many countries politicians have circumvented the rules by hiding their assets and business interests behind the names of their wives, sons, or other proxies.

The effective implementation of Article 41, if adopted in the final constitution, is a good deterrent against those who may be tempted to use their public office to line their pockets.

Its application will then be subject to review by courts of law and not left to the whims of incumbent politicians.

Article 41 is, however, very vague about what business activities by ministers are in fact considered improper, and the question still remains as to whether the provisions are adequate.