

DRAFT IS OUT

Possible future Namibia constitution revealed today

THE CONTENTS of Namibia's draft constitution, which was completed over the December recess, have been revealed. The draft, which has yet to be ratified by both the Standing Committee and the 72-member elected Constituent Assembly in the near future, is a moderate document which contains no shocks and will go a long way towards placating critics of the Swapo movement.

It is possible however, that amendments will still be made to the draft by the Standing Committee, before it is finally presented to the Constituent Assembly for its approval.

Among others, the draft provides for the inclusion of Walvis Bay in the national territory of Namibia; members of the National Assembly would be elected by proportional representation; abolition of the death sentence; conscientious objection to compulsory military service will be permitted; citizenship after five years residence; a Bill of Fundamental Human Rights enforceable by the courts; prohibition of child labour; everyone entitled to a fair and public trial; compulsory schooling until 16 years of age; racial discrimination and apartheid shall be prohibited by an act of parliament; provision for state of emergency in time of war, national disaster or public emergency by the President; a person shall not hold office as President for more than two terms of five years each; legislative power shall be vested in a 72 member National Assembly; and others.

A few key aspects of the draft are listed below:

ESTABLISHMENT

- * Namibia will be a sovereign, independent and secular Republic founded on the principles of democracy, the rule of law and social, economic and political justice;

- * the national territory of Namibia shall consist of the whole territory recognised by the majority of the international community through the organs of the UN as Namibia, includ-

ing the harbour and port of Walvis Bay, as well as the islands off Namibia, and its southern boundary shall extend to the middle of the Orange River;

- * any person who is ordinarily resident in Namibia, and has been for a continuous period of no less than five years, shall be entitled to apply for citizenship by naturalisation;

- * Parliament can also authorise by law the conferment of citizenship upon any fit and proper person by virtue of any special skill or experience or commitment to or services rendered to the Namibian nation either before or after independence;

FUNDAMENTAL RIGHTS AND FREEDOMS

- * The fundamental rights and freedoms enshrined in this chapter will be respected and upheld by the legislature, executive and all organs of government and agencies and shall be enforceable by the courts;

- * the right to life shall be respected and protected, and it shall not be competent for any law to prescribe the death sentence and no court shall have the power to impose a death sentence;

- * the dignity of every person shall be inviolable;

- * no person shall be subject to torture;

- * no person shall be required to perform forced labour;

- * any person who has conscientious objections to serve as a member of the defence force, may however be required to perform labour in place of such service;

- * no child below the age of four-

teen years shall be employed to work in any factory or mine or engage in any other hazardous employment;

- * no person may be discriminated against on grounds of race, colour, ethnic origin, sex, religion, creed or social or economic status;

- * no person shall be subject to arbitrary arrest or detention;

- * no person who is arrested shall be detained in custody without being informed of the grounds for such arrest, and nor shall he be denied access to a lawyer of his choice;

- * a person arrested and detained in custody shall be procured before the nearest magistrate within forty-eight hours of such arrest;

- * no law providing for preventive detention shall authorise the detention of a person for a period in excess of thirty days unless an advisory board consisting of five persons, of whom no less than three are judges, has authorised an extension;

- * everyone is entitled to a fair and public hearing by an independent, impartial and competent tribunal established by law;

- * no one shall be subjected to interference with the privacy of his home, correspondence or communication "save as in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country...";

- * fundamental freedoms are guaranteed;

- * no expropriation of property without payment of just compensation;

- * every person shall have the right to participate in peaceful political activity intended to influence the composition and policies of the

government;

- * any person fearing persecution on grounds of his political beliefs shall be entitled to claim asylum in Namibia;

- * every person shall be entitled to enjoy, practice, profess and maintain and promote any culture, language, tradition or religion subject to the terms of the constitution;

- * every person has the right to education which shall be free and compulsory;

- * no child shall be allowed to leave school until he has reached the age of sixteen years;

- * everyone shall have the right to maintain private schools or colleges provided that the standards are not inferior and that no restrictions are placed on admission on grounds of race or colour;

- * apartheid and racial discrimination shall be rendered criminally pun-

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NIKO GETS TOURISM

BY GWEN LISTER

FORMER Swapo Foreign Affairs deputy, and well-known Windhoek architect, Mr Niko Bessinger, has been appointed as Swapo's shadow minister for tourism in the new government, it was reliably learned yesterday.

Only two outstanding ministerial posts were still to be filled following the announcement of the 16-member cabinet by the Swapo President, Mr Sam Nujoma, at the end of last year. These were the positions of minister of tourism and agriculture respectively.

Mr Bessinger was not available for comment, but it was learned that he had accepted the post as minister of tourism. It is believed that the ministry of agriculture is still to be offered to an Afrikaans-speaking white Namibian, whose name will not be released until such time as he is officially approached in connection with the post. The person in question is apparently still on leave.

* Mr Bessinger is pictured above.

NOT AN 'OFFICIAL' DOCUMENT

THE STATUS of the draft constitution reproduced on these pages today is unofficial, since it has not yet been officially tabled before, or discussed by, the Standing Committee, although it is believed that individual members are in possession of copies.

The Standing Committee did not authorise the public release of this document, if indeed it is the constitutional blueprint in question, according to members of the said Committee.

The procedure was that the Standing Committee would first discuss and possibly amend aspects of the constitution, drawn up by a three-member legal team from South Africa; and then later table it before the Constituent Assembly for its final approval before releasing it for public scrutiny.

ishable by the courts "for the purposes of expressing the revulsion of the Namibian people to such practices";

EMERGENCY AND WAR

* In a time of war, national disaster or public emergency the President may by Proclamation published in the Gazette declare a state of national emergency exists;

* any laws made by the President in this regard shall cease to have legal force if not approved by the National Assembly within fourteen days after the date of commencement of such laws;

* the President shall have the power to declare war, and to proclaim or terminate Martial Law (which may only be declared in a situation in which war prevails);

THE EXECUTIVE

* executive power shall vest in a Cabinet headed by a President, who shall be head of state and of government and commander in chief of the defence forces;

* the president shall be elected by the National Assembly on secret ballot and by a simple majority;

* the term of president elected to office shall be five years unless he dies or resigns; he shall hold office for no more than two terms;

* a President shall be removed from office if a two thirds majority of all members of the National Assembly adopts a resolution impeaching him;

* after a President has vacated office, he is granted an indemnity from civil proceedings in respect of acts done by him in his former capacity as President (unless he has been impeached on grounds specified in the Constitution);

* the President may dissolve the National Assembly by Proclamation if the government is unable to govern effectively;

* appoint and receive ambassadors and other diplomatic representatives;

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* declare war, or martial law and conclude peace;

* confer such honours as he deems appropriate on residents and friends of Namibia;

* appoint the Prime Minister, ministers and deputies, commanding general of the armed forces; the Inspector general of police; members of the public service commission; appoint a judicial service commission and with the approval of the National Assembly, appoint the Chief Justice, the Attorney General and the Ombudsman;

* the Cabinet shall consist of the Prime Minister and other such Ministers as the president may appoint;

* no minister may take up other paid employment; or use information by virtue of his position to enrich himself;

THE LEGISLATURE

* legislative power shall be vested in a national assembly of 72 members elected by general, direct and secret ballot in a system of proportional representation;

* the term of office shall be five years and no longer;

* a quorum of at least thirty six members shall be necessary to constitute a meeting of the Assembly for the exercise of its powers;

* where a bill is passed by a majority of two thirds or more, the President is obliged to give his assent thereto;

* the Assembly shall have the power to make and repeal laws for the peace, order and good government of the country;

HOUSE OF REVIEW

* There shall be a House of Review established by the President within

five years from date of independence;

* this will consist of two members from each region to be elected by an electoral college which will consist of the regional council and municipalities;

* this House shall have the power to review proposed legislation and investigate and report to the National Assembly on any legislation;

* all bills, other than those dealing with taxes and allocation of public monies, shall be referred to the House of Review;

* if it rejects a bill, the same will be referred back to the National Assembly;

PRINCIPLES OF STATE POLICY

* the state shall strive to promote the welfare of its people by means of a social order in which justice, social and political, informs all institutions of national life;

* it shall direct policy towards securing that all citizens have the right to an adequate livelihood;

* that ownership and control of material resources are distributed to serve the common good;

* that there is equal pay for equal work for both men and women;

* that the formation of trade unions to protect workers rights and interests is encouraged;

* that the aged, incapacitated and unemployed have social welfare and amenities;

* that the legal system provides free legal aid where necessary;

* that workers are paid a living wage;

* that planning is undertaken to raise the level of nutrition and standard of living of Namibia's people;

* that in international relations the

state promotes peace and security; just and honourable relations between nations; and encourages settlement of disputes by arbitration;

* that natural resources, beauty and ecology be protected and developed for the benefit of the people;

* that the mass of the population be encouraged to participate in governmental decision making and debating such decisions at all levels of public life;

* the economic order shall be founded on principles of economic justice and securing for Namibians a life of human dignity;

* property ownership shall include public, joint public-private; cooperative; small scale family; and private ownership;

* foreign nationals shall be encouraged to invest;

* land water and natural resources shall belong to the state where it is not otherwise lawfully owned by another person or corporation;

* the state shall establish a Central Bank of Namibia;

* there shall be a national planning commission to plan national development;

ADMINISTRATION OF JUSTICE

* the judiciary shall be independent and subject only to the constitution and the law;

* it will consist of a supreme court and magistrates and inferior courts;

LOCAL GOVERNMENT

* Namibia will be divided into local units of state government;

THE OMBUDSMAN

* there shall be established an office

of the Ombudsman who shall be independent;

* he will investigate complaints of violations of fundamental freedoms, abuse of power, etc

PUBLIC SERVICE COMMISSION

* the PSC shall be independent and impartial;

* it will have the power to appoint suitably qualified persons to the public service and assure the fair administration of personnel policy;

POLICE AND DEFENCE

* there will be a Namibian police force with prescribed powers, duties and procedures in order to secure the internal security of Namibia and to maintain law and order;

* there shall be an Inspector General of police appointed by the President;

* he shall make provision for a balanced structuring of the police force;

* there shall be established a Namibian defence force with prescribed powers, duties and procedures to defend the territory and its national interests;

* there shall be a Commanding General of the defence force appointed by the President;

FINANCE

* the movable and immovable assets which were owned before the commencement of the constitution by the transitional government, the SA Development Trust, representative authorities in terms of AG 8 and the Government of Rehoboth, shall at commencement of the constitution vest in the government of Namibia;

* the State Revenue Fund shall continue;

The Act will be called the Namibia Constitution Act, and will come into operation on the date of independence, if ratified by the Constituent Assembly.

PREAMBLE TO THE DRAFT CONSTITUTION OF NAMIBIA

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace; and

Whereas the said rights include the right of the individual to life, liberty and to the pursuit of happiness, regardless of race, colour, ethnic origin, sex or religion, creed or social or economic status; and

Whereas the said rights are most effectively maintained and protected in a democratic society, where the government is responsible to freely elected representatives of the people, operating under a sovereign Constitution and a free and independent judiciary; and

Whereas these rights have for so long been denied to the people of Namibia by apartheid, racism and colonialism; and

Whereas the people of Namibia have finally emerged victorious in their struggle against such apartheid, racism and colonialism; and

Whereas the people of Namibia are determined to adopt a Constitution which expresses for themselves and their children their determination to cherish and to protect from invasion and corrosion the gains of their long struggle; and

Whereas the people of Namibia desire national reconciliation in order to foster peace, unity and a common loyalty to a single state; and

Whereas the people of Namibia have resolved to constitute Namibia into a sovereign, secular, democratic republic, and to secure to all its citizens:

JUSTICE, social, economic and political LIBERTY, of thought, expression, belief, faith and worship EQUALITY, of status and of opportunity and to promote among them all

FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the free Nations of the world

NOW THEREFORE, we the people of Namibia declare this day, the following as the fundamental law of our Sovereign and Independent Republic."

Unita captives released

ANGOLAN Unita rebels handed back in northern Namibia two Windhoek residents abducted last month, a police spokesperson, Chief Inspector Kierie du Rand, said last night.

The couple, Mr Alex Puhl and Ms Annalise Gevers, stopped at a mission station in Kavango in northern Namibia on December 24 and left their vehicles behind.

They went canoeing on the Kavango river where, police said, they had been forced at gunpoint to cross into south-western Angola, stronghold of Unita.

Their disappearance came to the

attention of police on Sunday when people began to make inquiries about the seemingly abandoned vehicles at the mission station.

Inspector Du Rand said the couple had been returned by Unita rebels to northern Namibia on Monday.

They had been "treated well" by Unita, but further details were not available, the police spokesperson said.

AROUND THE WORLD

PAARL, SOUTH AFRICA - Black South African nationalist leader Nelson Mandela signalled for the first time he expects to be free within weeks. He told his wife in a prison meeting to begin arrangements for his release. It was the first time since his arrest in August 1962 and his 1964 life sentence for sabotage that Mandela or his wife, Winnie, had acknowledged any optimism about an imminent release.

BUCHAREST - A military court set up by Romania's new leaders began the first trial of Ceausescu loyalists who fought on after the overthrow and execution of the communist dictator. A spokesperson for the ruling National Salvation Front described the accused as "terrorists", and said the trial in the central provincial capital of Sibiu would be the first of a series. Romania also said that Comecon, the Soviet-led East Bloc economic alliance, must undergo radical reform or die. A Salvation Front spokesperson told a news conference provisional prime minister Petre Roman would join other Comecon heads of government in Sofia on Tuesday to discuss the group's future.

JOHANNESBURG - Nine people were killed in fighting between rival black activist organisations in South Africa's Natal province at the weekend, police said.