



NAMIBIA PEACE PLAN STUDY & CONTACT GROUP - (NPP) 435

1 February 1990

THE CHAIRMAN OF THE CONSTITUENT ASSEMBLY
WINDHOEK 9000

Dear Sir

PROPOSAL ON A CONSTITUTION FOR THE REPUBLIC OF NAMIBIA

May we at the outset congratulate you, as well as the other members of the Constituent Assembly, on drafting a document, which, taking into consideration the history of Namibia, is a truly remarkable one. It becomes an even more remarkable document when one considers that the majority of the members consist of people who have been refused these rights by those who now insist thereon. The Constitution of the Republic of Namibia should be the pride of each and every Namibian and it will be our function to assist a Government of Namibia in achieving this goal, and to so convince the citizens of Namibia that their struggle has culminated in an independence where the rights of all citizens are protected.

As the draft Constitution was only publicized on the 26th of January 1990, it has not been possible for us to formulate a comment thereon earlier. We do feel that an input from Namibians is necessary even though the Constituent Assembly is not bound to take note thereof. We intend to deal with the Constitution in at least two stages and shall comment thereon up to and including Article 43 in this the first commentary. Our comment is meant to be constructive and not destructive and you are requested to see it in that light.

CHAPTER 2

Citizens from all over the world have in no small way contributed to the independence of Namibia and it is therefore fit and proper that Namibian citizenship can be conferred by Parliament upon any fit and proper person who has rendered service to the Namibian nation, either before or after independence.

CHAPTER 3

The occurrences, such as public floggings, which took place under South African rule will now be specifically prohibited in terms of Article 7 of the draft Constitution. This we see as a positive step and should avoid such unpleasantness in the future.

We understand that Article 11 has been amended in that subparagraphs 4-7 have been omitted.

The article dealing with children's rights is indeed an important and significant one, especially taking into account the spotlight which has in recent years been focused on children's rights, especially by organi-

zations such as Unicef.

The article on education seems to omit the freedom of scientific research and the exclusion of political motives in forbidding such research as well as in the freedom to express oneself in the fine arts. There have been countries who have in time of war as well as during peace restricted their people by excluding the abovementioned rights and so causing disconcert and uprisings.

Historically, women of Namibia have made a significant contribution to its independence and have suffered at least as much as the men of this country have.

We therefore feel that it should not only be permissible in the enactment of the legislation to have regard to the fact that women in Namibia have traditionally suffered special discrimination but that in fact the legislature shall have regard to the fact that women have traditionally suffered discrimination. The sub-article as it stands would only make it permissible to take this into consideration but would not in any way oblige the legislature to do so.

The sequence of articles in a document express the priority which the author attaches thereto and we therefore feel that article 24 dealing with derogation should follow the article that it describes, namely article 26 dealing with states of emergency, war and martial law. Unfortunately, we see the necessity for including a provision dealing with the situation of war and a state of emergency. We are also aware of the limitations placed upon the exercise of the powers of the President but would suggest that the powers granted to the President during a state of emergency should be reviewed by the National Assembly as has been suggested within fourteen (14) days, but suggest that this review should take place with a two-thirds majority in order to conform with article 26(3).

The President of the Republic of Namibia should rule by example and should not be free to act in an arbitrary manner. The President should not be above the Law, and if he were to act in any manner contrary to the contents of the oath which he has to take in terms of article 30, he would in any event be acting contrary to that very oath. We therefore would suggest that it would be unwise to free a President of any criminal blame which may attach to him during this period of office. A Court of Law should be the institution to decide on that.

In terms of the Constitution, the right to life is entrenched and is expressed, among other things, in the provision that no Court should be competent to pass the death sentence. The functions, powers and duties of

the President are described in such a way that these duties would in fact be contradicted if it were possible for the President to escape criminal liability. It is therefore strongly suggested that article 31(2) be omitted and scrapped in its entirety.

May we mention that the oaths as set out in the Constitution do not make provision for an affirmation, even though article 38 makes mention thereof.

A further point of concern is the powers given to the President to appoint certain people, among them, judges, the Ombudsman, the Auditor-General and the Governor of the Central Bank. It should here be remembered that it is only the judiciary that can check the exercise of power by the Executive. Even though it is stated that the President shall act on the recommendation of certain Government Commissions, we know that these Commissions themselves will have been appointed by the Government of the day. We fear that the President's powers as set out will interfere with the judiciary and that the separation thereof as discussed earlier in the Constitution becomes blurred. For the same reason we do not consider it advisable to grant to the President powers to remove any person appointed by the whim of the President. Again the recommendation of a Government Commission is not safeguarded. It is suggested that people holding such office should be appointed by the National Assembly and should be removed by the National Assembly.

The article dealing with the duties and functions of the Cabinet should be redrafted to read that the members of the Cabinet shall have the function to direct, co-ordinate and supervise the activities of ministries and government departments rather than to assist therein. We also noticed that certain branches of the Executive are mentioned under article 40 but no mention is made of health, education, housing and employment, which we consider to be as if not more important than Foreign Affairs, International Agreements and matters of National Defence.

We thank you for having taken the time to read this document and to consider the value thereof for your deliberations.

Yours faithfully

CHAIRMAN
on behalf of the Executive Committee of NPP 435