

2. The working of the Constituent  
Assembly with Cedric Thornberry  
&  
Opuko Senior legal Advisor

Radio programme number 108  
UNTAG Information Service  
8 November 1989

Opening Theme/Announcement/Theme

Namibia's first free and fair elections, taking place right now under United Nations' supervision and control, mark the climax of the first stage of the implementation of the Settlement Plan for Namibia, as established in Security Council resolution 435. The second stage opens with the naming of the 72 men and women who will be elected this week. That stage will lead to the adoption of a constitution for Namibia, and to its independence as a new, full member of the international community.

We have with us two lawyers to discuss the laws that will govern the working of the Constituent Assembly -- Cedric Thornberry, from Ireland, Director of the Office of the UN Special Representative, and Kwame Opoku, from Ghana, UNTAG Legal Adviser.

Mr. Thornberry explains what will be the duties and responsibilities of the 72 elected representatives of the Namibian people:

CUT 1.  
Thornberry           The Settlement Plan, first put forward in 1978, states that the Constituent Assembly will draw up and adopt the Constitution for an independent and sovereign Namibia. It says that the Assembly is to meet for the first time one week after the certification of the election by the Special Representative.

Mr. Opoku describes the Proclamation which was issued a few days ago for the establishment of the Constituent Assembly:

CUT 2  
Opoku                The Proclamation on the Assembly, which the Administrator-General issued after lengthy discussions with the Special Representative, gives effect to the Settlement Plan. It is published together with an exchange of letters between the Administrator-General and the Special Representative.

This Proclamation says that the finally-agreed Constitution will be adopted by a two-thirds majority of the total membership of the Assembly, as Mr. Thornberry explains:

CUT 3  
Thornberry           In other words, at least 48 of its members will have to agree to it. The Assembly will have the power to declare Namibian independence on a date that it chooses -- the date on which the Constitution will come into force. It will also be able to establish a government for the independent state of Namibia in accordance with the laws of that Constitution. Before deciding the date of independence, the Assembly must also obtain the Administrator-General's views on the matter.

Mr. Opoku outlines some of the other provisions of the Proclamation:

CUT 4  
Opoku

It sets forth initial procedures for the Assembly to follow, unless and until it decides on new procedures. It provides for the Assembly's first meeting, to be held at the Tintenpalast, and for the appointment of an Acting Chairman, pending the election of a Chairman. It also makes provisions for a secretary and other officers, and for the salaries of Assembly members. Furthermore, the Proclamation specifies that the Assembly's proceedings have legal immunity and are protected from interference.

The Proclamation also spells out what happens if an Assembly seat becomes vacant because a member no longer represents his or her party. But it is actually a short Proclamation, because it is essentially up to the Assembly itself to take every one of its major decisions, on both policy and procedure.

There are limits on what the Assembly can do. It cannot make new laws, for example, as Mr. Thornberry explains:

CUT 5  
Thornberry

No new legislation may be adopted until the Assembly has drawn up the Constitution and proceeded to establish a government for the independent state in accordance with the Constitution.

There has been speculation as to whether the Assembly could turn itself into a Parliament. Mr. Opoku comments:

CUT 6  
Opoku

That will depend on the Constitution that it adopts for Namibia. It might decide to do so, or it might not. It is up to the Assembly.

Tomorrow, more on the Constituent Assembly. Now, with free and fair elections under way in Namibia, UNTAG has these reminders for voters:

Go to the polls early. Bring your registration card and an identity document with a photo on it. If you don't have an ID, you can be identified by a friend or relative who does have a registration card and an ID with a photo.

If you lost your registration card, don't worry: you can still vote. You will have to fill out an affidavit at the polls, giving your registration information again.

Once you receive your ballot, take it into the booth and mark it in the box next to the party of your choice. Be sure to mark only one box.

If you are a registered voter, it is your duty to vote. It's time for you to decide the future of your country. And remember, your vote is secret!

This is Karen Barrett, for the UNTAG Information Service.

\* \* \*

Radio programme number 109  
UNTAG Information Service  
9 November 1989

#### Opening Theme/Announcement/Theme

Today, as Namibians go to the polls to elect a Constituent Assembly, we take another look at the workings of that Assembly, as set out in UN Security Council resolutions and in the Proclamation on the Constituent Assembly.

Kwame Opoku, from Ghana, is UNTAG's Legal Adviser. Yesterday, he referred to the Exchange of Letters between the Administrator-General and the Special Representative, which was published along with the Proclamation. Today, he explains what that exchange is about:

CUT 1  
Opoku First, it says that if the Special Representative is not satisfied that the Assembly can freely and expeditiously do its work, he is to inform the AG and make whatever comments or proposals he thinks are necessary.

Another UNTAG legal expert -- Cedric Thornberry, from Ireland, Director of the Special Representative's Office -- discusses the Constitutional Principles which have been referred to frequently in recent days:

CUT 2  
Thornberry They are also dealt with in the Exchange of Letters. They originate in an additional agreement negotiated in 1982 among the five governments which drew up the original Settlement Plan, and all the other parties concerned. These principles were referred to by the Secretary-General in a report to the Security Council in January of this year, and that report was approved by the Council in its resolution 632. The Secretary-General had said that "these agreements and understandings remain binding on the parties" and this position was then endorsed by the Council. The Exchange of Letters between the AG and the SRSR requires the Special Representative to keep the Secretary-General informed about the work of the Assembly, with special reference to the Principles. The Secretary-General will then keep the Security Council informed so that it can take whatever action it finds appropriate.

The Constitutional Principles relate to key provisions in the Constitution for Independent Namibia, as Mr. Opoku explains:

CUT 3  
Opoku A Constitution sets out the legal structure of government, and how the various sectors inter-relate and work together. And most modern constitutions establish a bill of human rights, of fundamental rights and freedoms.

And these Principles mandated by the Security Council deal with some of the most fundamental rules for the state of Namibia itself, says Mr. Thornberry:

CUT 4  
Thornberry They say that Namibia will be a unitary, sovereign and democratic state, and that the Constitution will be its supreme law. They provide that it can be amended only by a designated process involving the new Parliament, and/or by votes in a referendum.



Mr. Opoku explains further:

CUT 5  
Opoku

The Principles provide that the system of government will have three branches -- an elected executive branch which will be responsible to an elected legislature; and an independent judiciary which will be able to interpret the Constitution, to ensure its supremacy, and to ensure the authority of the law. This would mean that any laws made by the government would have to be approved by the Parliament, and that the judiciary would have to decide in favour of the Constitution if there were ever a conflict between the Constitution and any other piece of legislation.

And, says Mr. Thornberry, the electoral system would be a free and fair one:

CUT 6  
Thornberry

The Principles specify that the executive and legislative branches would be elected in periodic and genuine elections, by a secret vote.

\* \* \*

Tomorrow, the third and final programme in our series on the Namibian Constituent Assembly. Now, with free and fair elections well under way, UNTAG has these reminders for voters:

Go to the polls early. Bring your registration card and an identity document with a photo on it. If you don't have an ID, you can be identified by a friend or relative who does have a registration card and an ID with a photo.

If you lost your registration card, don't worry: you can still vote. You will have to fill out an affidavit at the polls, giving your registration information again.

Once you receive your ballot, take it into the booth and mark an X in the box next to the party of your choice. Be sure to mark only one box.

It's time for you to make your choice for your country's future. And remember, your vote is secret!

This is Karen Barrett, for the UNTAG Information Service.

Radio programme number 110  
UNTAG Information Service  
10 November 1989

Opening Theme/Announcement/Theme

Today, our third programme on the workings of the Constituent Assembly which is being elected this week in free and fair elections.

Yesterday, we looked at the Constitutional Principles that were negotiated in 1982 and were reaffirmed by the Security Council this year as binding on all the parties concerned. UNTAG legal experts explained that the Principles provide for Namibia to be a unitary, sovereign and democratic state, with the Constitution as its supreme law, and that they also provide for the regular holding of free and fair elections.

Today, UNTAG Legal Adviser Kwame Opoku, from Ghana, further describes the features of the 1982 Principles:

CUT 1  
Opoku                    There would be a declaration of fundamental human rights, in accordance with the Universal Declaration adopted under the auspices of the United Nations in 1948. Anyone who thought his or her rights had been unlawfully interfered with would be able to appeal to the courts to enforce those rights.

Cedric Thornberry, Director of the Special Representative's Office, explains what kind of rights would be protected:

CUT 2  
Thornberry            The Principles specifically state that all Namibians must enjoy the rights to life, personal liberty and freedom of movement, as well as freedom of conscience and freedom of expression, including freedom of speech and a free press. They also provide for freedom of assembly and association, including political parties and trade unions. The right of all citizens to due process and equality before the law is also spelled out. People would be protected from arbitrary deprivation of private property, and from deprivation of private property without just compensation. They would also be protected from discrimination -- racial, ethnic or sexual.

It would also be forbidden to pass criminal laws with retrospective effect, says Mr. Opoku, who goes on to describe the provisions of the Principles that apply to public officials:

CUT 3  
Opoku                    They require a balanced structuring of the public service, the police service and the defence services, and for equal access by all to recruitment to these services. And they provide that the fair administration of personnel policy in relation to these services will be assured by independent bodies.

And, says Mr. Thornberry, the Constituent Assembly can add any other basic human rights or freedoms that its members think desirable.

CUT 4                    It has to incorporate the provisions of the 1982  
Thornberry            Principles into the Constitution, but otherwise it can create  
any form of government that it wants.

But many people have wondered why the 1982 Principles were not set out in the local law, the Administrator-General's proclamation on the Assembly.

Mr. Opoku explains:

CUT 5                    This was discussed at length between the Administrator-  
Opoku                    General and the Special Representative. Both wanted to  
ensure, in the best possible way, to make them effective. The  
United Nations felt that the Constituent Assembly was an  
expression of the will of the people of Namibia, as determined  
in free and fair elections, and should not be subject to local  
South African laws.

Mr. Thornberry adds:

CUT 6                    The principles are set out in international law, with  
Thornberry            the Security Council, which was the source of these very basic  
democratic standards and rights. That is what ensures that  
they will be respected when the Constitution is adopted.

And the Security Council must be kept informed. As Mr. Opoku says:

CUT 7                    The Secretary-General is mandated by the Council to  
report back to it on the matter. Which makes him the  
effective guardian of the inclusion in the Constitution of  
these democratic standards and basic human rights for all  
Namibians.

In these last days of voting for the Constituent Assembly, UNTAG has the following reminders:

When you go to the polls, bring your registration card and an identity document with a photo on it. If you don't have an ID, you can be identified by a friend or relative who does have a registration card and an ID with a photo.

If you lost your registration card, don't worry: you can still vote. You will have to fill out an affidavit at the polls, giving your registration information again.

Make sure you know your party's symbol. Once you receive your ballot, take it into the booth and mark an X in the box next to that symbol. Be sure to mark only one box.

It's time for you to make your choice for your country's future. And remember, your vote is secret!

This is Karen Barrett, for the UNTAG Information Service.

\* \* \*