

CONSTITUENT ASSEMBLY

DEBATES

1 February 1990 - 16 March 1990

VOLUME 2

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M Katjiuongua

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M Kerina

NNF:

V Rukoro

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CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
1 FEBRUARY 1990

The Assembly met pursuant to adjournment.

RESUMPTION OF DEBATE ON DRAFT CONSTITUTION

FIRST ORDER READ:

Resumption of debate on Draft Constitution.

ARTICLE 126 PUT AND AGREED TO.

ARTICLE 127 PUT.

MR KAURA: Thank you, Mr Chairman. I have a slight problem with Article 127, I have two problems. In the first place, I am wondering whether the Bill of Fundamental Rights can be changed with a two-thirds majority, whether the right to life, the protection of life can really be changed with a two-thirds majority of this House. Therefore I feel that something must be done here to guarantee my right to life and the right to life of the children of Namibia for many generations to come. My feeling at this particular point is that a subparagraph must be added to this amendment part that the Bill of Fundamental Rights cannot be amended at all. Maybe the legal advisers can put it in appropriate Latin words that will describe that particular right. But I would like the Bill of Fundamental Rights to be entrenched and to be unchangeable, because I do not think we as a people who have abolished the death sentence, can really turn around and amend the right to life with a two-thirds majority. It would be a contradiction in terms. So, I feel that a sub-article must be added that the Bill of Fundamental Rights is entrenched and cannot be changed.

On our part, Mr Chairman, a slight amendment. If you look at Article 127, you will come to the point where it begins with "provided":

"Provided that if an affirmative vote of a two-thirds majority of all the members of the National Assembly cannot be obtained, the President may by proclamation..."

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MR KAURA

and I would like to add this slight amendment to read:

"Provided that if an affirmative vote of a two-thirds majority of all the members of the National Council cannot be obtained, the National Assembly by a two-thirds majority will request the President to by proclamation make the proposed constitutional amendments the subject of a national referendum."

So, my two proposals are: The Bill of Fundamental Rights must be entrenched and not be changed at all by a two-thirds majority. Secondly: That the National Assembly, by a two-thirds majority will request the President to, by proclamation, make the necessary arrangements. Thank you.

CHAIRMAN: Any objection to the amendment of Article 127(1)?

MR PRETORIUS: Mr Chairman, I must put our point of view again very clearly, and that is, that in principle we did not agree with the Bill of Rights, we should like to change it in future and I am not in favour that that point shall be entrenched before there is consensus about the Bill.

MR RUKORO: Thank you, Mr Chairman, for the time-being I am not going to address myself to the first part of honourable member Kaura's submission, namely whether or not the Bill of Rights should not be the subject of a constitutional amendment. I reserve my comments on that one for the time-being.

At this point I want to address myself to the specific amendment on Article 127, namely that any bill seeking to amend the constitution and which has obtained a two-thirds majority in the National Assembly, but fails to obtain a two-thirds in the National Council, should, before it can become the subject matter of a referendum, as proposed in this draft, be referred back to the National Assembly so that that body can decide by a two-thirds majority whether or not it should become the subject matter of a referendum. I have a problem with that procedure, two-fold.

Firstly, the Constitution as it is, including the amendment mechanism we are proposing here as a committee, is

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MR RUKORO

fairly rigid and we did that for obvious reasons, so that nobody can easily tamper with the Constitution. If we were going to agree to the suggestion proposed by the honourable member, then basically we are introducing an element of an over-kill in the whole procedure. It is going to become extra rigid, and I am afraid, as I have said in my primary submission when this Assembly was convened way back in December, whilst we are for a relatively rigid constitution, we must guard against procedures which make the amendment process so rigid, to the point that the only way to bring about changes is basically to break the Constitution itself, that is not helpful, and I suspect that what we have here, really is fairly rigid in that you require a two-thirds majority of both Houses of Parliament, failing which, if you don't get a majority in one house, you require a two-thirds of the entire population. And on top of that we entrenched this particular clause itself, it cannot be changed for ever.

Mr Chairman, I submit that this is as rigid a Constitution and an amendment procedure as one can contemplate, and I would commend the House to retain its present form.

MRS ITHANA: Thank you honourable Chairman, I won't argue this case as effectively as honourable Rukoro has done, but I would also like to know, when we are trying to make this Constitution so rigid, what makes us to feel like that? I thought people who are going to be leaders, national leaders, will be people who are tested by their organisations and the community to an extent that when they take a decision, they take a decision in the interest of their organisations and the nation at large.

As honourable Rukoro has said, if we make this Constitution so rigid, we might be creating avenues for future upheavals. Future leaders who might want to bring changes in the Constitution, maybe changes of necessity because this society is going to change, will find it impossible to the extent that they will be tempted to resort to other means of bringing about change. In Africa coups are well-known. Coups are attempts of solutions sought because people have no other way of bringing about change. So, I will echo the appeal of my brother here that we retain this article as it is.

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MR ANGULA: Thank you, honourable Chairman, much of what I wanted to say has been said by the two honourable members, namely honourable Rukoro and honourable Ithana.

This Article 127 provides a very rigid procedure for amendment of the Constitution, and I would like to remind my good friend and brother, Kaura, that amendment doesn't only mean to put bad things there, but you can also amend a constitution to put in new ideas which may develop in the course of history.

As we are going to grow and develop as a nation, obviously new challenges will come forward which we have to respond to as a nation. If we make it so impossible for our Constitution to respond to the new challenges in life, I am not quite sure whether we are actually charting the road for this nation in such a way that it cannot fully develop itself.

So, I don't think that we need to add another constraint on this Bill as far as the mechanism of amendment of the Constitution is concerned.

Having said that, I would like to seek especially the guidance of the lawyers and anybody who seems to be knowledgeable. This article attempts to entrench the procedures for amending the Constitution. I have no problem with that. But it appears also that in terms of entrenching these procedures, it attempts also to entrench some of the clauses which are already contained in the Constitution, by implication. Therefore I would like to ask our learned lawyers to allay my fears on this particular score, that as much as we are entrenching the procedures for the amendment, we should not entrench the amendment of certain articles in this Constitution which might be implied in this section. So I need to be enlightened on that score. Thank you.

MR BARNES: Mr Chairman, it does appear as if there is a slight misunderstanding here. Legally it can be argued that reading this clause as it stands, there is a vacuum as far as who is responsible or who will be the functionary. It says, "an amendment which is accepted by the National Assembly by two-thirds will be referred to the National Council. In the event that the National Council does not have an affirmative vote of two-thirds to accept that amendment, the President may resolve the matter with a referendum."

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MR BARNES

The question that can arise here and that is, according to my humble opinion, a vacuum, is, who is the functionary that refers it to the president? All that is requested here is that the same body, the National Assembly that originally took the decision to amend a certain clause with a two-thirds majority, the very body of responsible leaders that saw the necessity - and I am sure it will be with the idea of progress or good government or a better society, I want the honourable members who opposed this inclusion of the amendment, to stand still for just one moment.

The National Assembly, by two-thirds majority, has accepted an amendment to a clause in the Constitution. That already shows that the National Assembly has duly and with deep concentration accepted a change. The National Council says - for reasons of their own - "we do not want to agree with this amendment." All that my honourable colleague requested was that once that amendment of the Constitution is referred back by the National Council to the National Assembly, the National Assembly by two-thirds again will request the president, by proclamation, to call a referendum so that the people can decide whether they agree to the amendment of the Constitution. There is actually no more rigidity being built in, there is no more being done than what was originally done when the responsible representatives of the people decided to amend the Constitution, obviously, in the interest of the country.

So you will see that they are not making it more difficult. Instead they are allowing the National Assembly again to reconsider this amendment, which they originally decided by two-thirds, because you must remember that the National Assembly has already agreed at that point to propose an amendment to the Constitution by two-thirds.

I think that there is a misunderstanding, I have every reason to believe that this is in the interest of everybody, that it can never be said the president just called out a referendum. He was requested by a two-thirds majority of the National Assembly, and obviously it will be the members on the other side of the House and us on this side, we are the majority together, that if those parties agree that an amendment is in the interest of the country, all they are asking by this amendment is, "allow us to request the president to call out a referendum to test if the people out there agree with the National Assembly."

On another point that my honourable colleague Angula has raised: I have much understanding and I agree with him.

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MR BARNES

There are certain things in the Constitution that need not be entrenched, but again, there are certain things in the Constitution that we would like to entrench, and when I say "we", I refer to the whole honourable House, because it is our joint responsibility to draft this Constitution.

Now Sir, the honourable member Mr Angula came up with something that I don't think many of us thought of. I agree in one sense with the honourable member Mr Rukoro and honourable Ithana that the Constitution must not be so rigid that it prevents progress which comes with time. I am ad idem with them, we are not in dispute. All that honourable Rukoro is asking is, (a): Let the same party that originally proposed the amendment of the Constitution by two-thirds request the president to write out a referendum so that the people can decide. Our only intention is to make this contribution for the best constitution, and I am sure that you will now appreciate that there is no conflict of interest, there is no increasing of rigidity in this Constitution, it is improving it, because it affords the National Assembly, who originally proposed the amendment by two-thirds majority, to request by a two-thirds majority a referendum, and since the two bodies which form parliament cannot decide, that the people decide.

I trust that I have contributed to clarity on this matter. I thank you.

MR GURIRAB: Honourable Mr Chairman, I should say at this stage that all things being equal, the arguments made so far would favour retention of the paragraph as it stands. If there were misunderstandings, then this were clarified by the very last intervention of honourable Barnes. What I wanted to say really was covered by all the speakers in various ways.

I just want to add a point by saying that citing the example of the American Constitution, one of the most respected, most beautiful, democratic constitutions, but really think about it, what makes that constitution so beautiful, so lasting? Yes, it is the genius of the founding fathers, the drafters in Philadelphia, but it is really the amendments to the constitution. The amendments to the American Constitution are the ones that make that constitution most appealing to the universe, and therefore, when we were debating this point I made that reference in the committee.

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MR GURIRAB

So, we should not entrench the amendment with over-kill, that we prevent us from taking advantage of the changes that take place. Our Constitution must be dynamic, it must be flexible enough to accommodate changes as and when they come, and that entrenchment, that we would not quickly run and change the Constitutions, had been so elaborately entrenched in this article that we would really do ourselves a service if we retain the article as it stands. Thank you.

MR KAURA: Mr Chairman, sometimes I am disappointed by the usage of the spoken language, because it seems as if it is the weakest vehicle to use to communicate, because people misunderstand each other on a very simple issue such as this one.

I would like to ask the honourable Mr Pretorius whether really he intends to amend or abolish the Bill of Fundamental Rights? And I would like to ask my honourable brother on the other side, Mr Nahas Angula, do you really intend to amend or abolish the Bill of Fundamental Rights?

The history of man has been symbolised throughout the centuries by cruelty of man against his fellow human being and the experience of this century. The Bill of Fundamental Rights did not exist prior to the beginning of this century. There was no bill of fundamental rights. But the experiences have taught us that it is essential in any constitution to include the bill of fundamental rights, the right to life, liberty and the pursuit of happiness, as was enunciated by many philosophers in Europe, and because of this we write constitutions to protect man against himself and his fellow-man. This is why we have a bill of fundamental rights, to protect us against ourselves.

This is why I feel I might agree with a little bit of what you said at the end, that maybe we could consult the lawyers, which articles in the Bill of Fundamental Rights must be entrenched. If it is not the whole Bill of Fundamental Rights, which articles in the Bill of Fundamental Rights must be entrenched? For example, if I look at Article 6 - Protection of Life, honest to God I don't think there is anybody in this House who will ever stand up and say we must amend protection of life. How can we amend the protection of life? Even from whatever religious point of view, whether you are Islamic, Confucius, Buddhist or whatever the case may be, the point of depar-

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MR KAURA

ture is the protection of life, and I do not think that human values will be lowered to such an extent that the protection of human life would no longer be necessary. And the respect of human dignity...

MR ANGULA: On a point of order. You are now talking about the Bill of Fundamental Rights, you are not talking about...

MR KAURA: I am not out of order, the Bill of Fundamental Rights must be entrenched. Maybe you misunderstood me. This is lack of communication. It is a communication gap. I said the Bill of Fundamental Rights must be entrenched, unalterably. This is what I am talking about, I am not talking about the whole Constitution.

I am also a student of American history, honourable Gurirab knows that, and I know all the amendments - I used to know them by heart - to the Constitution of America. I taught it in schools and so forth. So I know that. That is what I am talking about, that the Bill of Fundamental Rights cannot be amended. This is my position and I hope this is not making the Constitution rigid if we do not amend the Bill of Fundamental Rights, and as I was made to understand in this House, the ladies, our mothers, have greater respect for life. I think if we entrenched these articles, protection of life, I think our mothers will agree with that and my sister, Mrs Ithana, will agree with that too.

When it comes to this amendment I added to this article, I thought it was only procedural. It was only a question of procedure, not to overload, to make this thing top-heavy. It is only a question of procedure. The separation of powers determines that the president is not part of this Assembly. So, how would the president know that the Assembly is deadlocked and he must call a referendum? Obviously there must be somebody to instruct the president to call a referendum. Who would that person be? If the National Council cannot pass the amendment by a two-thirds majority, which was passed by the National Assembly, who is going to refer this matter to the president? Would the president walk in here and say, "you are naughty boys, you don't agree, so I am going to call a referendum" or would somebody have to refer it to the president? It is a question of procedure, it is not overloading the thing.

This is why I added that if there is a deadlock between the two houses, it must come back to the National Assembly, and the National Assembly, which has already passed it by a two-thirds majority, must refer this to the presi-

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MR KAURA

dent to call a national referendum to let the people decide. It is a question of procedure, it is not overloading or making this thing top-heavy. Let's understand each other very well.

CHAIRMAN: While we are talking about this, could we also maybe ask the lawyers whether what the honourable member is talking about, the first part, is not covered by Article 24(3)?

MR RUPPEL: Briefly in response to what the previous honourable speakers said, I think to build a constitution here which is not flexible and which cannot be changed in good time, is like building a vehicle without springs or shock-absorbers and try to travel to a distance place where you can't make use of a tarred road. You will run into trouble inevitably.

I think, looking just at the one example that was picked out in relation to human rights, and more specifically that particular right to life under Article 6, where we, with our noble idea of the goodness of mankind, have provided that the death sentence is not an appropriate measure to restrain criminals from repeating what they have done and to also contain society from taking revenge, we think may not be necessary, but I think it would be arrogant of us to assume that our assessment of what society is like is correct. It would be really asking too much from us at this stage. In a hundred years' time, three or four generations further, they may think that we were a bunch of nut-cases and we didn't know how society really works and that they must bring back the sentence which we now write out of this Constitution. There may be very sound reasons one day to bring it back. We know now already that there is a debate going on in many countries around this world about the death sentence. Some who haven't got it want to bring it back and they discuss it openly.

So, there is always the possibility that even the most sacred values can be touched in the future, depending on how our society develops, and we cannot see to eternity, we must really look at what we have today, build on that, but don't assume that it will stay like this for ever. That was the one point.

The other one is more specific.

MR RUPPEL

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MR KAURA: On a point of order. Can my learned friend, colleague and honourable member explain to me what is meant in Article 24(3), please, with this eloquent argument he is now advancing on the amendment of the Constitution?

MR RUPPEL: I will look at it and I will ask for a chance to speak on that in a moment.

There is a more specific problem relating to Article 127, the honourable Mr Nahas Angula touched on this, he stated the problem in general terms. I want to be more specific.

What we have done in the present formulation is to entrench one of the state organs, namely the National Council - or so it seems. One could possibly argue that the parliament or the constitution of the parliament could be changed in future, but it is not clear whether it is an argument which can hold and whether that is an argument that will be accepted by our Supreme Court. I do not think that it was the intention of anyone in the standing committee, when we agreed on the entrenchment of the procedure to amend the Constitution, that we should by the same token also entrench certain organs of state. Organs of state serve the needs of society from time to time, and particularly so the National Council. The arguments which were advanced in favour of it were all looking at the problems of Namibia today and not in a hundred years' time. In a hundred years' time the communication between people may be very different from now. It may not be necessary to have a diversified system of electing your representatives like we foresee it now.

So, I think we should have a critical look at this, I have two draft formulations which would take adequate care of this, it does not take care of the problem raised by honourable Mr Barnes that the proposal for a referendum should come at the initiative of the legislature rather from the president in the case of a deadlock. It does not address that, but there are two formulations which are available.

I think we are all raising issues now and we can't sit here and draft a resolution to this problem. Perhaps it would be better if we refer it to the lawyers to come back in half an hour with a revised formulation which may be closer to consensus than we are now. Thank you.

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MR KOZONGUIZI: Mr Chairman, I am rising on a point of order in this House on your behalf. I did not want to interrupt the speakers, but Rule 30 says: "No member shall pass between the Chair and any member who is speaking", and whilst the honourable member Mr Angula was speaking, the honourable Mr Hidipo Hamutenya came in and he passed between the Chair and the honourable Mr Angula. I was merely going to draw the attention of the Chairman to that so that it should not happen again.

DR TJIRIANGE: Thank you, Comrade Chairman. A lot has been said and I am just standing here to support those honourable members who are pleading with this House for us to maintain the Constitution as it is on this particular issue, i.e. on the issue of the amendment of this particular part.

Although a lot has already been said, I can only say two or three things. The mover of this idea, if I understand him correctly, by the Bill of Rights has in mind Chapter 3 of this Constitution as a whole. That is my understanding. I stand to be corrected. I think by the Bill of Rights he is referring to Chapter 3 as a whole of this particular draft.

If it is so, and if we can go by the suggestion, then we are saying that if the Namibian people in the future, even a hundred years from now on, by hundred percent, not two-thirds, don't want something in this part, they don't have to do so, because we think we are so clever to have seen things that are coming even 200 years from now on, that those who will live 200 years from now on, even if they want to change by hundred percent certain provisions of this, they cannot do so.

I have listened to the argument that nobody in this House will dare to stand up and say that he wants to eliminate the provision on protection of life. If it is so, and if we say that nobody can do so, why are we worried then if it is so clear that nobody will do that?

For example, take page 15, Article 17(2), which says:

"Every citizen who has reached the age of 18 years shall have the right to vote."

What if in fifty years people want people of 17 or 16 to vote and not necessarily 18? Maybe we have our reasons

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DR TJIRIANGE

why we want 18 now, but those people must have their own right. Why should we say, since we want 18 it must be 18 for ever?

Take for example the articles dealing with education. We are talking about free education, primary. What if after 70 years people say that all education should be free, not only primary? Then it is a holy cow, they cannot touch it.

I would maybe go by the suggestion that if we can identify specific issues we can argue on them. But to say the Bill of Fundamental Rights should not be amended, I think is not the correct way, because amendment can be either negative or positive. Why should we stop people to improve upon what we have or to negate what we thought is correct today? I think it is not fair to stop the Namibian people from changing something even if they want it by hundred percent, just because we wanted them not to do that, even thousands of years to come from now on.

I appeal that I think this suggestion is a non-starter, let us go ahead. Thank you.

MR ANGULA: Mr Chairman, first I would like to say that sometimes I tend to talk so fast and perhaps some people have difficulties of comprehending what I am saying. It is most unfortunate for honourable member Kaura to attribute what honourable Pretorius said to me. I started by saying that I supported what honourable Rukoro and honourable Mrs Ithana said, and they both said they are not going to address themselves to the question of entrenchment. I took it from there. If we are going to talk about entrenchment, we should talk about it somewhere else, not in an amendment. We are talking about an amendment now. If we are going to talk about entrenching certain sections of the Constitution, let us talk about it, but I don't talk about it. Honourable Kaura said something about it, I thought it is not the place to talk about entrenching certain sections of the Constitution. You can have a chapter, Entrenchment, somewhere and then you identify those things you want to entrench and then you debate on the basis of that, whether it is worthwhile to entrench those sections.

What I talked about is the procedure of the parliament or the nation to embark on the process of a popular referendum. That is what I talked about first, and I said that

MR ANGULA

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if there is a deadlock between the two houses, obviously somebody has to break the deadlock, and we do know that all the bills that emanate from the House goes to the president. I think that was the logic when the president was made to proclaim that the nation should go into a national referendum to decide on the deadlock. I think that was the logic. So, if the honourable member thinks that that logic is not sufficient, he can argue his case. I only stand by saying that the procedure as it is now is quite in order.

Then I made a second point that within this Article 127 the procedure of amendment is entrenched, and I don't want that entrenchment to apply also that we entrench the amendment on anything about the two houses, and I asked the lawyers to assist me on this. The lawyers have not yet been given a chance to reply, but honourable Ruppel came up with a suggestion that he also felt the same and apparently he did his homework, he is going to provide us with something to look at.

Honourable Chairman, I think we should try to listen to each other very carefully and get the sense of direction of what the person is saying so that we don't start saying wild things in this House. Thank you.

MR PRETORIUS: Mr Chairman, I only objected, on your request, you asked us, on the question of the entrenchment of the Bill of Rights, and honourable member Mr Kaura now asked me a very direct question about the fact whether I am in favour of amending the Bill of Rights. My answer is yes, because I think it can be improved.

Mr Chairman, during the whole of my political career I stressed one thing very hard and that is that one must make a difference between principles which never change and policy which must change every day according to circumstances. One can only read the leading article of the "Republikein" of this morning to see how important it is even to change this Constitution in future. And now, because this Bill of Rights, according to my opinion, is a mixture of principles and policy, methods, I am prepared to settle about the principles to be entrenched, as we did in Article 24(3), but as far as the policy aspect is concerned, I am in favour thereof that we must be in a position to change it in future, to improve it, to adapt it to circumstances. I hope that will satisfy the honourable member Mr Kaura.

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MR MUDGE: Mr Chairman, I want to make it very clear that we in the DTA do not want to make the Constitution too rigid, of course not. It must be possible to amend the Constitution, and at the speed that we are now going through the Constitution, we might find it necessary, very soon, to propose a few amendments. As a matter of fact, I am later today going to propose an amendment of an article which was accepted yesterday, which proves my point that we don't want to make it too rigid.

On the other hand, Sir, we also must not make it too easy and to strike that balance, that is exactly our problem. I agree with the honourable member Mr Pretorius - it does not very often happen - that there are a mixture of principles and policy in this Constitution and even in the Bill, but I have some understanding for the honourable members that have suggested that some of the principles, at least not the policy, but the principles, if possible, should be entrenched.

I very much appreciate that there are people in this country who have so much admiration for the product of this Assembly that they want to protect it and I we must have appreciation for that, and we must not blame them because they want protection against unnecessary amendments. I think I have covered the point by honourable member Kaura about entrenchment of certain principles.

Coming to the suggestion made by the honourable member Mr Barnes, we must be very careful not to take decisions which are inconsistent with other decisions that we have taken in our haste to complete this Constitution. We have done that in the case of this particular article.

I want to refer you to Article 74. Look at the procedure which is prescribed in the case of ordinary laws passed by the Assembly, and then referred to the National Council. What happens if the National Council considers that bill? Should they disagree with some of the paragraphs, but agree with the principle, then the bill is referred back to the Assembly. The Assembly reconsiders the bill and whatever they decide, it will not be necessary for this bill to go back to the National Council.

Paragraph (c) reads as follows: "If the bill is then passed by the National Assembly, whether in the form in which it was originally passed, or in amended form, the bill shall not again be referred to the National Council but shall be referred by the speaker to the president to enable him to be dealt with under Article 56." (c): "If a majority of two-thirds of all the members of the

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National Council is opposed to the principle of a bill, this shall be mentioned in its report to the Speaker and in that event the National Assembly will be required to reconsider the principle of the bill."

Why can't this also be the procedure in the case of the amendment of a bill having as its aim the amendment of the Constitution, which is a much more serious matter than amending an ordinary law or an ordinary bill? What I am trying to explain is that what the honourable Mr Barnes said makes sense. Should the National Council object to a bill passed by the National Assembly, and have some recommendations to make, why can't it go back to the National Assembly? It might solve the whole problem and it could save us the costs of a national referendum. This enables consultation between the two houses which must save us a lot of time.

I don't want to take up more of your time, the honourable member Ruppel indicated that he has some amendments to propose and I am very curious to know what he has in mind, it might solve the problem. The very fact that he has prepared an amendment proves that he also found it necessary or, if not necessary, that he is at least prepared to accommodate those who have some reservations about this article. But then I would ask, should that be the case, whether the lawyers cannot advise us. Mr Chairman, you will forgive me for saying this, but earlier during this debate I suggested that we should refer some of the issues back to the committee. I did not get much support from any side in this House. The advantage of discussions in the committee was that we had continuous contact with our advisers. Whenever we wanted to change something, we always could ask them, "can it work, is it consistent" and they always had an immediate reply ready for us. Now we don't have that, and let me tell you, Sir - and I will prove that later today - that we are taking decisions here which makes it almost impossible for our lawyers to write the constitution. In other words, Sir, we will have to come back to this House again after we have received the final report from our advisers. This is going to happen and I think it is much better if we can, as we go, consult with them.

My proposal: Let Mr Ruppel suggest whatever he wants to suggest, we would like to hear that, and after that, let our lawyers look at this particular paragraph to make it consistent with Article 74(4)(b) and (c), so that at least we follow the same procedure in both cases, and then, let us not look and talk lightly about certain principles that we believe should in some way or another be entrenched. I

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cannot see how the paragraph that has now been referred to on more than one occasion in any way entrenches any one of those principles. I just cannot see that.

Mr Chairman, I can promise you, Sir, I do not have so many principles as Mr Pretorius, I concentrate more on policy. I only have a few principles, let's try and entrench those, Sir. Thank you.

MR VON WIETERHEIM: Honourable Chairman, I would shortly like to support the speakers reacting to honourable Kaura's statement. Unfortunately he connected two different things and I am not going to react to his suggestion in respect of the president and the National Assembly, I am just going to react to the entrenchment of the fundamental rights.

I think we have, according to the attitude yesterday, achieved very much here. We have achieved also, I think, in the eye of the public opinion very much in respect of democratic principles. If I listen to honourable colleague Kaura, I think he is overplaying his hand. Honourable Mudge was just now speaking of inconsistencies. In the DTA's proposals - and I am only referring to this specific point because it was raised by the other side of the House - the death sentence was included in the right to life. It was entrenched into that Constitution, because the fundamental rights were entrenched in those proposals.

On the other hand, honourable member Mr Mudge, a few days ago mentioned that he could not really speak against the preventative detention because of his chairmanship of the subcommittee advising on it. Nevertheless, this clause also was taken out, all these on the initiative of this side of the House.

MR MUDGE: What has that got to do with the whole issue?

MR VON WIETERHEIM: We are talking about the principle of the entrenchment of something which was changed...

MR KAURA: On a point of order. I want to find out from the honourable member if the members of the committee are free to divulge to the public those things which were discussed in camera, what were the positions of the various political parties before they reached consensus, as he is referring to the position of the DTA in the committee concerning the death sentence. He referred to the position of the DTA in the committee on the death sentence.

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Are we all free to divulge what the position of the other parties were?

MR VON WIETERHEIM: I am not referring to that because I have not been in the committee, I am just referring to the original proposals.

MR MUDGE: On a point of order. I just want to make sure whether we are now going to list all the concessions made by the various parties in this process or are we discussing a particular article? If the honourable Chairman would allow us, then we can start a nice little political debate.

CHAIRMAN: This document we have here is not from any political party, it is the product of the committee.

MR VON WIETERHEIM: I think, Mr Chairman, I mentioned that I am just referring to these specific points as they were mentioned by our colleague who opened this whole debate.

MR KAURA: On a point of order. The honourable gentleman must retract that and continue dealing with this document instead of referring to other documents prior to the production of this final document.

MR VON WIETERHEIM: I retract it, Mr Chairman.

MRS ITHANA: Mr Chairman, I find the House is kind of misunderstanding one another, accusations are being made to one another, but maybe I had a different understanding of what the gentleman there was saying.

MR VON WIETERHEIM: Mr Chairman, I retract it if I quoted from documents that I should not have quoted.

The third point I wanted to make is the one that was raised already, and this is why I am just going to mention it, the possible improvements which could also be added to this Bill of Fundamental Rights. I think they were mentioned by honourable Tjiriange. In the light of this I will certainly say, let us go on and look at the other point that was raised by our colleague in respect of the referral of the constitutional changes from the National Assembly to the president. Thank you.

MR KAURA: Thank you, Mr Chairman. Many honourable members have argued eloquently against the entrenchment of

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the Bill of Fundamental Rights, oblivious to the fact that there was an attempt to entrench the Bill of Fundamental Rights under Article 24(3), and if you could turn to it, my honourable learned colleague Dr Tjiriange, where it says:

"Nothing contained in this article shall permit a derogation from or suspension of the fundamental rights or freedoms referred to in Articles 5, 6, 7 up to 21, excluding Article 11,

which I felt should be included -

nor the denial of access by any persons to legal representative or a court of law."

This was an attempt - and this comes out of the committee to entrench the Bill of Fundamental Rights. Maybe you forgot about that. That was an attempt to entrench the Bill of Fundamental Rights. Maybe my English is not good. But my feeling is that the statement, "will not permit a derogation" is not enough. If we are going to select articles such as this, as honourable member Nahas Angula stated that it should be under another article which is not in this one under entrenchment, where certain articles of the Bill of Fundamental Rights would be entrenched under a different heading, I have no problem with that. But I felt at this point under Article 127, when we are dealing with the amendment of the Constitution, I thought it was proper to bring it in that the Bill of Fundamental Rights must be entrenched and not be amended, and it seems as if many members who spoke were oblivious to the fact that there was already an attempt to entrench the Bill of Fundamental Rights and I want it to be explicit that certain articles are entrenched and they will never be changed.

MR STABY: Mr Chairman, I have few arguments of substance that I can add to this particular topic. I think we have just had a clear demonstration of the fact that it is true that trust is seated in persons rather than in pieces of paper. I think we still have a long way to go towards turning the piece of paper, which is our Constitution, into a document which is trusted and revered by everybody, not only in this honourable House, but by the entire nation.

I want to make it clear that I want to support the un-

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alterable entrenchment of certain principles of fundamental rights. At the same time I want to support the principle that the Constitution must not be a rigid document. We will, as honourable member Mr Mudge has suggested and many other members have indicated, have to either as a result of the fact that we are inexperienced in the art of writing a constitution, or as a result of passage of time, have to make certain amendments to the Constitution, whether we like it or not. But I would like to make a distinction between fundamental principles and the mechanisms which are created in order to implement those principles.

I think Article 20 is a good illustration of what I am trying to bring across to the honourable House. Article 20 deals with education and the first paragraph reads:

"All persons shall have the right to education."

And then it goes on to say that primary education shall be compulsory, and paragraph (3) says children shall not be allowed to leave school, etc., etc. These to me are the mechanisms which have been created or are to be created at this particular point of time, taking into consideration our ability and our resources and our vision in order to give effect to the aforesaid principle.

I say that if the 1982 Principles, which were agreed and which I regard as the instruction by the international community to the authors of this Constitution, if those principles stated that the constitution shall provide for a democratic state based on multi-party principles with free and fair elections, all based on a bill of fundamental rights, then that to me is the essence of the state, and I would argue that this essence has been prescribed by the international community and that this essence is inviolable, and the same is applicable to the Bill of Fundamental Rights.

The essence of the 1982 Principles, as far as I am concerned, are contained in the fundamental rights, and what we are asking for is nothing more than the entrenchment of the principles.

It can be argued, as the honourable member Mr Kaura did, that paragraph (3) of Article 24 is an attempt to entrench irrevocably, inviolably, unalterably certain principles. Of course, the fact that this particular paragraph can be changed is the very issue. So, we can do either one of two things. We can either make allowance - if that were possible in legal terms, and here we have to again refer

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to the advisers - if it were possible in legal terms, to state that the principles of the fundamental rights are inviolable - not the mechanisms which have been created to implement them, not to the constraints which have been placed upon them in order to let society function. If that were possible, then I would argue for that, for a formulation of the clause accordingly. If that were not possible, then I would argue that perhaps one should say that Article 24(3) must be regarded as inviolable, as unalterable, as totally entrenched, something to that effect.

Again I want to make it clear, Mr Chairman, that these rights cannot be amended in any event. The principles do not lend themselves to amendment, that is not possible. The only things which can be amended are the mechanisms which are created in the Constitution in order to give life to these principles, in order to implement them, in order to let society benefit from those principles. So, if we talk about the amendment of the Constitution, we talk about the amendment of these mechanisms, we don't talk about the amendment of principles. In principle a principle is not amendable. I hope I have made myself clear. Thank you.

MR BARNES: Mr Chairman, at this stage, may I pray just for one thing, and that is cool thinking. Can I just beg of the honourable members of this House that when a proposal is made, please do not judge it on political or ideological grounds, but look at the proposal with an open mind, because every proposal or amendment submitted by this side of the House is not with the intention of blocking anybody, is not with the intention of destroying anybody or any party or any person. It is not with the intention of making a few political points.

I have listened to the honourable learned member Mr Tjiriange, I have listened to Mr Nahas Angula, I have listened to the honourable member Mrs Ithana - I am not going to say "my sister", because that seems to be the thing and she may not want to be my sister, we might have other ideas... LAUGHTER. Mr Chairman, all I am asking - and I was of the opinion that when we accepted Article 74 (b) and (c), that we were fully aware of the mechanism for the passing of bills, for amendment of present bills. I was under the impression that the learned gentlemen were aware of the mechanisms, and all we are asking here is that we apply the same principle that is in Article 74(c).

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MR VON WIETERHEIM: On a point of order. Did we not agree just now to have this point resort under the new point of Mr Ruppel? I think that was the proposal honourable Mudge made.

MR BARNES: Mr Chairman, if you say now that the proposal of the honourable member Mr Mudge is accepted ... INTERJECTION. I have to learn to accept the roses with the thorns.

If the honourable members in this House accepted the principle that when a law - and I now have to repeat what my honourable colleague, Mr Mudge, said - if they accepted the principle in procedure, that if one house doesn't accept a bill and differs on principle, it can only be accepted in the other house by a two-thirds majority, then the president signs the bill. All we are asking here is for the same mechanism with the amendment of the Constitution and that the National Assembly takes responsibility for the change of the Constitution that they originally proposed and that they request the president, "please call out a referendum." Why do we have to speak two hours on such a simple mechanism that we have already agreed to? We only want it mutatis mutandis in this Article 127. I thank you.

CHAIRMAN: Honourable members, we started this meeting 14h15 and it is now 15h32 and democracy being what it is I allowed members to express themselves to convince one another. The lawyers that we are talking about are just architects, they give us what we want. These things have been to the lawyers, the lawyers gave us their views, we debated it, because if we don't agree politically we are not going to take the lawyers' advice, we are drafting the Constitution. They only give us what we ask them to give us.

When I look at the list I have seven members who are in favour of the amendment, then I have ten who wants to retain it as it is. I can allow you to continue, but we are not going to solve it, because it looks like we have a principle difference here, and I don't want to say the House is divided, but I was just giving you the trend of the argument.

MR RUKORO: Mr Chairman, I think we should be cognisant of the fact that two amendments have been proposed at the same time, the one dealing with making it impossible for

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the Bill of Rights to be amended in such a way that the amendment should have the effect of abolishing or diminishing from a fundamental freedom or right. I think that is one amendment.

The more controversial one - not controversial, but certainly the one that provoked more debate - was whether or not to retain Article 127 in its present form, or whether it should be changed along the lines suggested by honourable member Kaura. My own view is that the first one is fairly non-controversial, namely that the Bill of Rights should not be changed or if it should be changed, it should be for the purpose of improving or adding some more, but not in a way that will detract or diminish from what we already have in the Bill of Rights. If that is the understanding, then I don't think this particular one should be thrown out with the other one. I think we should agree on this one and refer this to the lawyer, maybe to formulate something along the lines of "no amendment of this Constitution which has the effect of abolishing or abridging the fundamental rights and freedoms, as contained in Chapter 3^{supra}, shall be valid under this Constitution." That is if there is general agreement on the idea.

The other one I have no problems to deal with in the fashion you were suggesting.

CHAIRMAN: There is a proposal, rightly so, about the first proposal, that the fundamental human rights that are enshrined here must be entrenched. So decided.

MR MUDGE: Mr Chairman, may I just point out, that the proposal that we have made, namely that the procedures followed in the case of the amendment of the Constitution be the same as in all other cases, to prevent an unnecessary referendum, that the problems that the National Council might have, might be solved by referring it back to the National Assembly. That is the procedure which is followed in all other cases, why not in the case of the Constitution?

CHAIRMAN: Can we read the whole article?

"If such two-thirds majority is not obtained in the National Assembly, the bill shall lapse."

That is (c).

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MR MUDGE: That is not what I said, please.

CHAIRMAN: You didn't finish, you stopped somewhere, you should stop at Article 56. You didn't read the following sentence which says, "if such two-thirds majority is not obtained in the National Assembly, the bill shall lapse."

MR MUDGE: Article 74(4)(c):

"If a majority of two-thirds of all the members of the National Council are opposed to the principle of a bill..."

This is a case where the National Council rejects or is not prepared to approve the principle contained in a bill. In that event the bill will go back to the National Assembly to reconsider the principle. That is the principle that I want to include, the principle that an amendment of the Constitution is envisaged. It is passed by two-thirds of the Assembly. Then it goes to the National Council, the National Council rejects it on some grounds, whatever it might be. Now the president can call a referendum, but it might be possible that this disagreement between the National Assembly and the National Council can be sorted out by referring it back to the National Assembly. If the National Assembly insists, then a referendum can on their request or advice to the president be held. I don't have a problem there. I am not excluding a referendum, I am just trying to get the two bodies to consult about the amendment to prevent an the unnecessary and costly referendum.

BUSINESS SUSPENDED AT 15h40 and RESUMED AT 16h00.

MR RUKORO: Mr Chairman, it is a pity that some of the more senior members of this House are not yet back from their teabreak, because they were a party to this arrangement and I wouldn't want to misquote them or misinterpret the type of agreement that we have reached. Maybe you can send somebody to make sure they are here and endorse what we are saying.

On the understanding that their absence is a sign of agreement, the agreement we came to is that firstly, on the amendment, the fundamental rights and freedoms con-

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tained in Chapter 3 of the Constitution should be entrenched, meaning that they cannot be amended in a way which abolishes or detract from the fundamental rights or freedoms. That one is agreed to. In other words, we can have that type of amendment, that the Bill of Fundamental Rights shall not be amended and the only amendment is one with the object to improve on it, but not to detract from what we have already under Chapter 3. On that one we are in agreement.

The second understanding is that, with reference to Article 127, basically what we are saying is that the same procedure that applies in relation to a bill, an ordinary bill, that same procedure as contained in Article 74 and other parts of the Constitution should apply with equal force to a bill seeking to amend part of the Constitution. In simple terms, a bill seeking to amend the Constitution must be passed in the National Assembly by two-thirds, it must then go to the National Council where it should also be passed with a two-thirds. If both houses concur with a two-thirds majority the bill is carried, whether it is a bill relating to ordinary legislation or a constitutional amendment.

If, however, a two-thirds majority cannot be obtained in the second chamber, that is the National Council, then just like in the procedure relating to ordinary legislation, the bill should be referred back to the National Assembly where, if it is repassed with a two-thirds majority, it will be regarded as having been carried. There will be no need to go back to the National Council or to any referendum. It obviates the need for a referendum at that point, which also means that if for some strange reason the National Assembly the second turn around does not want to pass the bill or cannot muster the necessary two-thirds, the bill would lapse. That is, as far as I understand, the understanding we reached.

MR ANGULA: Yes, by and large honourable Rukoro has summarised what I have understood to be the case, but the reference to ordinary bills, an ordinary bill is supposed to be passed by an ordinary majority, not by a two-thirds. So there is a difference. It is only the amendment to the Constitution which is supposed to be passed by two-thirds and two-thirds.

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MRS ITHANA: Mr Chairman, I have also understood the explanation the way honourable Rukoro has related it. I am just failing to understand how we are equating an ordinary bill with a bill aiming at amending the Constitution.

I have also looked at the result we would like to achieve, and I am getting to believe that we are trying to circumvent bringing the people in deciding the amendment to the Constitution, because if a bill goes from the National Assembly with a two-thirds majority, it fails to get a two-thirds majority in the National Council, it comes back to the Assembly, then it does not get a two-thirds majority any longer, what happens to it? It lapses.

If the House originally felt that there was a need to change an article in the Constitution, what makes us believe that that need lapses? The need did not lapse, but the procedure we have adopted will kill that need.

So, I would like us not to exclude the referendum from the way we would like to amend the Constitution, because the referendum is one of the options given by the holy cow, it must play a role in changing our Constitution. INTERJECTION. I am referring to the document, The Constitutional Principles of 1982. There is a provision for a referendum in cases of this nature, and we must make it a point to make our people feel that they also have a role to play in deciding the destiny of this nation. We should also bear that thought in the backs of our minds that we will be in this House not elected as individuals, but elected on party-list, and therefore the people will be voting for parties, not for individuals, and people must be in touch with the machinery that is deciding their lives.

DR TJIRIANGE: Most of what I wanted to say has been said. My fear is only that the formula that has been proposed now, effectively eliminates recourse to referendum, and I thought that we have been talking about people being involved in decision-making here. When it suits us we want to go to them, at one time we don't want to bring them in, and at this stage I think that one way the people can express themselves is to go to them by asking their views on issues that we could not agree on, rather than to kill it here. When we kill it here, let the people outside there through a referendum express themselves whether they are with us or not. I would not go for any suggestion which will eliminate the recourse to referendum.

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MR MUDGE: Mr Chairman, I tried my best to explain what I have in mind. Of course, it is now senseless to repeat what I have said, I will have to try to approach it from a different angle. The best way to do it is to come back to a practical example.

In this House it is proposed that the age for people who are eligible to vote must be changed from 18 years to 17 years. That is the proposal. This Assembly approves by a two-thirds majority, yes we can change it from 18 to 16. It goes to the National Council, the National Council says no, 16 is too young, we cannot approve that, but we would be prepared to consider 17, but not 16. So they disapprove. Now the president has two options.

The one is, it remains 18, the other option is a referendum for the people to decide whether it should be 16, 17 or 18. By referring it back to the National Council and after a discussion a compromise could be made. The National Council might be persuaded to make it 17 and within two weeks you have an amendment of the Constitution.

Now you want to go to a referendum on an issue like the age of people who are eligible to vote. Thousands, if not millions of rand will be spent and months will pass on a matter which could easily have been resolved in an inter-action between the two houses.

So, as far as I am concerned, Mr Chairman, I cannot see why we cannot allow this matter, after having been discussed by the National Council, to be referred back to the National Assembly and we can easily solve the problem, because as I have already said, you can have a referendum when you want to write a new constitution, but by God you can't have a referendum every time you want to change the age of people who can vote. Why make it so complicated? That is why I suggested - and I will not participate in the debate again, as far as I am concerned, if people would not now understand my logic, then I don't think I have words to explain it any better.

MR KAURA: Thank you, Mr Chairman, I think it is fully explained, and I would like to say that almost all of us who are sitting here are elected by the people, and we have made a solemn commitment that we will serve the people. We are always prepared to go back to the people, whether we are members of a minority party or the majority party.

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That is the mandate which brought us here. So, it shouldn't be looked at as if we are arguing against a referendum, taking it back to the people. Some of us are from the people, we are children of persons, workers, and we are here to serve them. So, the allegation that there might be a fear to take it back to the people is absolutely wrong. We are prepared to take it back to the people, but we are only talking about the procedure. If you prefer another procedure, suit yourself.

MR ANGULA: Mr Chairman, I think much of the ground has been covered. I would like to say that I don't see the two houses as being watertight from each other. Surely when a bill on amending the Constitution is being debated in the National Assembly, surely the National Council will be aware of it, as much as the citizens as large will also be aware of it. At every stage members, individually or collectively, as members of the National Council could indicate to the Speaker of the House that the bill you are debating might get difficulties in our house and the difficulties might arise from this angle and that angle, can you do something about it?

What I am saying here is that I tend to believe that the two houses will actually consult. Even before the National Council rejects a bill, I tend to think that the chairman of that council will consult the speaker and inform the speaker that "we have certain difficulties with your bill and I don't know whether it was the right moment to refer it to us, can you perhaps look at it again to solve these problems." So, I don't see the two houses as being watertight as such.

However, coming back to the issue, the procedure proposed is just a full cycle of one way of amending the Constitution, that is through the votes by both houses, just one procedure, just one cycle. Certainly, in the event that there is a deadlock, somebody has to break the deadlock, the amendment of the Constitution is not like any other bill, it must be on something serious, and I am saying this to draw attention that discussions in the houses will be open to the public and the public will know. If you are not careful and you don't have a safety valve, you might get demonstrations in the streets there, people demanding that the president should do something about it.

MR BARNES: By Nanso?

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MR ANGULA: Yes, by Nanso. These people seem to fear Nanso. Yes, by Nanso. So, you have to have a safety valve that people feel that if these 104 gentlemen and women cannot agree, we as a nation can perhaps assist them to agree, so the concept of a referendum must be kept because it is also part of the document which is generally revered and revered by many people here, the 1982 Principles. I think it is just fair that we should give the community at large the possibility and the opportunity if it occurs. I don't think the parliament or anybody will be so irresponsible just to take anything to the public to amend the Constitution. I don't think that anybody will be so irresponsible, it is a costly business, it is true, and because of that I think people will not contemplate this course of action if it is not found to be necessary.

So that as much as I agree with the procedure stated by honourable Rukoro, I still think the procedure which involves the people in changing the Constitution should be there. After all, they are the ones who sent us here, they are the final arbiter in these things.

MR M GAROËB: Mr Chairman, I will be very, very brief, and probably at this point I will be playing more to the public, because the matter concerns the public.

This House and the honourable members stood accused not very long ago that we were keeping this document a secret, we did not give it to the public to debate it, etc., etc. If we are again seen not to be involving the public, except when we want to be elected to come here, by excluding the justified process of a referendum for the people to express their wish on very fundamental issues that concern the amendment of the Constitution, then we will be derogating the whole process of democracy.

MR KAURA: On a point of order, Mr Chairman. Nobody has said he is against a referendum. Please, it is only a procedure to a referendum.

MR M GAROËB: Yes, I hope that that is going to be the case. I just felt that I should say that to get it off my chest, if not for anything. Thank you.

MR GURIRAB: Honourable Mr Chairman, we are repeating here in this House the discussion we had in the committee

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MR GURIRAB

The ordinary bills are not the same as amending a constitution, so I don't buy that analogy.

Secondly, I personally have absolutely no difficulty in understanding what is on the table from the other side, no difficulty. I understood it in the committee, I understood it when it was introduced here. However it is put, with due respect, it is clear to me as it was clear to me before, that it is an attempt to circumvent the referendum; it is simply that to me.

Therefore, I see it as a question, on the one hand, of empowerment of the people in accordance with the 1982 Principles, or justification for financial implications or tyranny of time, on the other. We are not going to resolve it, it is a political issue and we will have to vote on it.

CHAIRMAN: Where did we lose the agreement you hammered out outside?

MR BARNES: Mr Chairman, in all seriousness, now I am having great difficulty understanding the honourable members on the other side.

Firstly, we proposed the following: That provisions be made as an amendment that if there is dispute between the National Assembly and the National Council on an amendment to the Constitution, the bill for the amendment of the Constitution will come back from the National Council to the National Assembly and the National Assembly will, by a two-thirds majority, request a referendum from the president. That was the original, that was not acceptable. That is what my honourable colleague, Mr Kaura, proposed.

Subsequently other proposals have been made. In a spirit of give and take we on this side of the House said, then let us do it and accept it this way as was proposed by honourable member Mr Mudge and Mr Rukoro. There was an alternative and even that is not acceptable. Now, honestly, Mr Chairman, if we accept a principle for changing a bill - and this is where I want to address in particular my honourable colleagues Mr Angula and Mr Gurirab and Dr Tjiriange, do we understand, with due respect, that if a bill on principle is rejected by the National Council, it must be referred back to the National Assembly? I wonder whether all this "national", "national" isn't confusing us. Shouldn't we change the names to make it easier?

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MR BARNES

So, when that bill, despite the National Council not accepting the bill and making amendments which the National Council does not want to accept, the National Assembly by a two-thirds majority will pass that bill.

But Mr Chairman, here we came with an alternative proposal and this shows goodwill on this side of the House, this shows that we are desirous to find solutions for something that we feel and are convinced is in the best interest of this country and the people and it is not acceptable to the members on the other side of the House. The only alternative that I could then propose, Mr Chairman, is that we adjourn, the caucusses go back again and see if they can't find another solution. I thank you.

MR RUKORO: Mr Chairman, I have two alternative proposals. The first one is by way of a question to the DTA-delegation: If the bill comes back from the National Council, having failed to obtain a two-thirds majority, it comes back to the National Assembly, it fails to get re-passed by a two-thirds the second time around, at that point, can the bill automatically be referred to the president who, by proclamation, can call a referendum to settle this question once and for all? Do you have a problem with that position? If you have, I have an alternative.

The alternative, which is the second proposal, is that we made a deal, for better or for worse, in the committee as embodied in Article 127 and the second proposal will be that we stick to that deal.

MR DE WET: Mr Chairman, it seems to me an attempt is being made to get a compromise, it seems to me there is a misunderstanding, and actually these two parties are very near to each other as far as I can see. I think to be wise now is to ask the honourable member Mr Kaura to submit his amendment in writing so that it can be studied and that we know what we are talking about, because it seems to me there is even a misunderstanding on what he is going to propose as an amendment.

CHAIRMAN: I agree. The honourable member will submit his amendment in writing.

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ARTICLE 128 - 130 PUT AND AGREED TO.

ARTICLE 131 PUT.

MR KOZONGUIZI: Mr Chairman, it is just a question of getting clarification. I see here that it is said in Article 131(1):

"The judges of the Supreme Court of South West Africa holding office at the date on which this Constitution is adopted by the Constituent Assembly shall be deemed to have been appointed as judges of the High Court of Namibia under Article 81 of this Constitution on the date of independence"

and the, and this is where I don't understand -

"and upon taking the oath of affirmation of office as set out in Schedule 5 to this Constitution, shall become the first judges of the High Court of Namibia."

What I don't understand, Mr Chairman, is that first of all we deem the judges to become the judges of the High Court of Namibia, but it appears as if after we have deemed them to be so, then we go to an oath which they have to take, and I don't know before whom they have to take this oath. Somewhere there was in this Constitution that they would have to take the oath before the president, but then it was pointed out by one member here that the president himself, taking an oath before the UN Secretary General, it was not the intention of the committee to say so. So, my problem is: Who is then going to take the oath? Is the president going to take the oath, so that maybe the judge can take the oath before him or otherwise? My understanding is that once you deem the judges of the Supreme Court of South West Africa to become the judges of the High Court of Namibia, the chief justice would be the one responsible for the oath of the president. It is simply a matter of seeking an explanation.

MR MUDGE: Mr Chairman, I have just consulted with the advisers and they referred me to Schedule 7. So apparently this matter has been taken care of. I am not yet sure whether I found the correct paragraph.

MR RUKORO: I would propose that we deal with this matter when we actually reach Schedule 7. I think at that point

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it will all become much clearer.

CHAIRMAN: Article (2)(a).

MR RUPPEL: Mr Chairman, in 131 there is a problem. It refers to timing of when this "deeming provision" comes into effect. I think it should not be on the date when this Constitution is adopted, but when the Constitution takes effect, otherwise we have two sets of judges, one appointed under that act and another one under this one.

In the second line it should then read:

"... holding office at the date on which this Constitution comes into effect shall be deemed, etc."

It should refer to the date of independence rather than the date of adoption of the Constitution.

ARTICLE 131 AGREED TO.

ARTICLE 132 PUT.

MR MUDGE: Mr Chairman, I do not want to discuss the article, I want to warn that this is a more important article than most of, including myself, really appreciate. In both Article 132 and 138, dealing with the repeal of laws, we will have to make sure that we do not leave anything out. I do not think, with all respect, that the members of this House is in a position to clearly determine whether the schedule includes everything that should be included.

Mr Chairman, I cannot imagine that we can differ in principle. This is just a matter of identifying all the laws involved.

I want to - and you will have to allow me just to prove my point - refer to Sub-article (5) under 132. It reads as follows:

"For the purposes of this Article the Government of the Republic of South Africa shall be deemed to include the Administration of the Administrator General appointed by the government of South Africa to administer Namibia, and any reference in legislation enacted by such Administration to the Administrator General, shall be deemed to be a reference to the President of Namibia."

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MR MUDGE

I would want to know exactly what the implications of this particular paragraph is. I have a suspicion, but I cannot go on suspicions.

Coming back to the article under discussion, 132, from which article I just quoted, I discussed this with the advisors and they said they can't do it, we have to consult people in the civil service who might know and identify these laws, and make sure that we do not leave anything out, otherwise we might have to amend the Constitution much sooner than we really wanted to. For that reason I want to propose that we refer these two articles to people who could advise us under the chairmanship of our advisers to make sure that they include all the relevant laws.

MR RUKORO: Mr Chairman, my own understanding is that Sub-article (1) of this article really says it all, by saying:

"Subject to the provisions of this Constitution all laws shall remain in force until repealed, etc.,"

and my understanding of "all laws" is just that, laws by the Administrator General, by South African Parliament which were made applicable to this territory...

MR MUDGE: Including preventative detention?

MR RUKORO: Well, those are subject to the provisions of this Constitution, so they cannot apply here. Laws by Municipal Councils, laws by whoever. So, I think it is an open-ended phrase really that does not leave any room for whatever eventualities.

CHAIRMAN: Other members seem to be clear on the intention of the article, so there seems to be no problem. Article 132(1) is agreed to.

MR ANGULA: In Subparagraph (5) I have the same problems as honourable Dirk Mudge. To my understanding there was a government here which ruled for I don't know how many years under the term Transitional Government, and since the government was there and, of course, the Administrator General was around, can these people not provide us with the necessary information since they have been charged all those years? It is just a request.

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MR BARNES: Mr Chairman, to answer the honourable member Mr Angula, that is exactly what the honourable member Mr Mudge proposed. Again it is something in our interest. I would hate to wake up the day after independence to find out that the president that was elected has the powers of AG 26, and all that we are asking here is that it be referred under the chairmanship of our own legal advisers, to consult with the civil servants and look at that request that the honourable Mr Angula made.

I want to second the proposal of Mr Mudge and Mr Angula that this be referred to our legal advisers and with the assistance of the civil servants, that should have every act on record in the Archives or wherever it is, that they advise us and say that law and that law must also be included, because it is in our interest. I thank you.

MR HAMUTENYA: Mr Chairman, I am lost, I do not know what we are going to achieve. Is the proposal aimed at ensuring that all the unwanted laws of the past will be abolished on the day of independence, or what is the point? What honourable Rukoro has said is that we will have enough time to dig up all those laws and abolish them one by one as time goes on. Those who are in conflict with the Constitution will automatically disappear. So, why should we now refer this thing to the lawyers as if it is an urgent matter which we have to resolve immediately? Is there a certain need?

CHAIRMAN: We are not the only colony which is succeeding a colonial power. There is a standard procedure how you take over from a colonial power.

MR MUDGE: Mr Speaker, please keep in mind that I wanted to discuss Article 132 together with Article 138. Article 38 makes provision for the repeal of laws. I now refer you to Schedule 6. I want you to have a look at Schedule 6. Are we going to accept Schedule 6 the way it is?

I am prepared to accept that all the laws will remain in force until such time as they have been repealed. It will be easy for me to take that decision once I know which laws will be repealed immediately. That is important to me.

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MR MUDGE

Mr Chairman, I am not opposing anything, I just gave some advice, but of course, you are free to carry on. I don't have any problem, but I hope that we are not making mistakes. I will prove later that we have made mistakes in our haste to continue. I want to ask at some stage to go back to some other articles that we have approved yesterday.

MR RUKORO: Generally on the discussion here I was going to say that Mr Mudge's advice will become extremely important when we come to discuss Schedule 4 which deals with the assets of the existing governmental bodies, as well as Schedule 6, namely repeal of laws. But at this point, in terms of which laws are to remain valid in terms of succession laws, that is a straightforward thing, there can be no loopholes. But when it comes to which laws are to be repealed and what are the assets of this government which should be deemed upon independence to become the assets of the new government, then his advice becomes extremely relevant.

ARTICLE 132 AGREED TO.

ARTICLE 133 - 137 PUT AND AGREED TO.

ARTICLE 138 PUT.

MR RUPPEL: Another definition which we have to get straight here is the repeated reference to members of the National Assembly when it comes to voting. In this regard I refer to Article 32(8), Articles 56(2) and (3) and Article 74(4)(c). They always refer to members of the National Assembly in various ways, there is no consistency. Sometimes it says "of all the members of the Assembly" and sometimes it says "members of the Assembly who can vote". It is very inconsistent, and I think the lawyers will streamline that.

MR RUKORO: My understanding is that the discrepancies are deliberate in the sense that when the Assembly is voting on an ordinary aspect, for instance, it is a question of the majority of the votes who are present, provided they form a quorum in the first place, but for instance when they are trying to reverse or review a presidential ac-

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MR RUKORO

tion with a view to impeach, then it must be a certain majority of all members. So we cannot make it uniform, it is a deliberate distinction.

MR KOZONGUIZI: Mr Chairman, I just want to point out here: it says, "Article 138 Repeal of Laws" and no other article after that. Then it gives the title of this Constitution. I should have thought that the title could not come under the repeal of laws.

ARTICLE 138 AGREED TO.

TRANSITIONAL PROVISIONS PUT.

MR RUKORO: Mr Chairman, there are a couple of things which ought to have been reflected as part of this chapter dealing with transitional provisions, but which I think we omitted. I think the lawyer is preparing something along those lines, if I am not wrong, but generally for the House, we said there should be definite time-limits with reference to the delimitation commission, that it should be established and commence its work within six months of independence, if I am not wrong. So, that needs to be reflected under transitional provisions.

Secondly, we also reached agreement that Municipal Council elections should be held not later than twelve months from the date of independence, if I am not wrong.

Thirdly, we also agreed that Regional Council elections should be held not later than 24 months from the date of independence.

Lastly, that the National Council would be constituted soon after the elections of the Regional Councils, but we didn't put a clear time-frame whether it is two weeks later, three months later or whatever.

MR MUDGE: Mr Chairman, before we get to the schedules, I want to ask permission to take you back to Article 111. I think there is a rather serious problem there that will have to be corrected.

In this article provision is made for the Public Service

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Commission, and normally the function of a Public Service Commission is to advise the government on the appointment of suitable persons and to advise the government as far as the creation of departments, etc., are concerned. It is not normal practice that a Public Service Commission actually appoints people, control and discipline those people and retire such persons. That is normally the responsibility of a department of the government and presently the Central Personnel Institution. It could be another department, for instance Domestic Affairs, I don't know, it depends on what the new government will look like. This is something for the government to decide.

But I cannot accept that a commission which is appointed by this Assembly can have the power to appoint people. The commission itself will be approved by resolution of this House, there I agree, I think that is the right way to do it and I think that the commission should also report back to this House.

Therefore I also do not agree with paragraph 1 under Article 111, namely that the commission should be accountable to the president and the cabinet. The department is accountable to the president. If you should give powers like this to the commission, then of course they will have to be accountable, but if these responsibilities are given to the department, then the department will be accountable. The Public Service Commission, which is appointed by the Assembly, or at least finally approved by the Assembly, will, as is the case with the auditor-general, be responsible to report back to parliament on their advisory functions but not on the actual administration of the department, whatever it is called.

Mr Chairman, of course, it would be acceptable to us if we as members of the Assembly could control the commission that makes the appointments, control them in such a way that they actually make the appointments and they are responsible to this Assembly. If I look at it from a political point of view, I might welcome it, but I am not looking at this Constitution from a political point of view.

Therefore I want to ask the permission of the House for our advisers to have another close look at this, it can't remain as it is, that is impossible, and that proves my point that in our haste to complete the constitution we make very serious mistakes, and I accept full responsibility for that. I was in the House and I overlooked it. So, please, let's get the lawyers to have another look at

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this. That is Article 111 and Article 112.

MR RUKORO: I was just wondering whether we couldn't make specific proposals now and then we amend it right here.

MR MUDGE: I'm not so sure that we can do that, but on the condition that the lawyers can just check on it, I would say that paragraph 111 be amended to read:

"There shall be established a Public Service Commission which is independent"

and we have already agreed how it will be established,

"...impartial and which will report back to parliament."

And not be accountable, because if you are impartial, you cannot be accountable to the government. That's not possible. Something like be responsible to report to parliament. That is the one I want changed.

Then in Article 112:

"The functions of the Public Service Commission to be defined by an act parliament shall include the following:"

To advise the government, whatever the government means, the president and his cabinet, in regard to suitable persons to be appointed in specified categories of employment in the Public Service. Secondly, to advise the government on the creation or organisation of the structure of the Administration. That is normally a duty. On how people should be retired and remunerated. I think that is another advice that normally comes from the Public Service Commission. In all cases it must advise. All the powers can never be included here, because there will be an act which will be comprehensive. But we chose to put in here, "shall include the following." Now we must list a few of the responsibilities of this commission. I did not prepare an amendment, but this is more or less what I had in mind. They should have extensive advisory functions.

CHAIRMAN: Is there agreement? Thank you.

SCHEDULE 1 PUT AND AGREED TO.

SCHEDULE 2 PUT.

MR MUDGE: Mr Chairman, I want to add a (5) there. The schedule provides for the election of members of the

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National Assembly. In the case of the past election we made hundred percent sure that the elections will be free and fair. Now, Sir, you will recall all the speculation afterwards about what went wrong, about boxes that got lost and all the rumours going around. Let me say this, and I am not afraid to say that, I was not one of the people who believed that the election was rigged. I think I can say that in public and I will be criticised for that, but I am prepared to say it in public. But Mr Chairman, we must make double sure that we will be in a position in future, whenever we have an election, that when there are suspicion or rumours, that we should be able to allay those fears and suspicions and that we must in our Constitution somehow, somewhere make provision that all parties participating must be put in a position to satisfy themselves as far as the elections are concerned. It is not that I have any suspicion, it is only that always after an election people come with these stories of this has gone wrong and that has gone wrong and then all the parties must be in a position to say it is not true, and that they are satisfied that the election was fair and free.

I want to specifically mention the delimitation of constituencies. It is normal practice that parties are consulted, that they are allowed to make recommendations and in the case of the election they must be allowed to be included in the process of supervising the election. This is just a humble request from my side, I don't know how to deal with it but if there is any support we can discuss it.

CHAIRMAN: Even in the countries we are always referring to electoral laws which spell out the role of the parties.

SCHEDULE 2 AGREED TO.

SCHEDULE 3 PUT AND AGREED TO.

SCHEDULE 4 PUT.

MR RUKORO: This is where Mr Mudge's advice becomes very important, especially in his previous capacity as Minister of Finance. We would like to know exactly what are the assets of this country, and therefore I don't think this schedule can at this stage be considered to be exhaustive and that maybe we need a small committee of people as Mr Mudge has suggested, our lawyers, to meet certain civil servants, heads of departments, simply to make sure that this thing here is exhaustive or whether one or two

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assets, like the South West Africa House, maybe, has been left out.

CHAIRMAN: I think that is supported, a small committee to investigate this very important aspect.

MR TSHIRUMBU: I just wanted to have clarity on this issue. Are the assets still in the hands of the Transitional Government which is no more, or are they in the hands of the AG as it would normally be expected?

CHAIRMAN: I didn't quite get that question?

MR TSHIRUMBU: I am saying on Schedule 4(a) we have assets of the Transitional Government. I am saying that the Transitional Government is no more, so that the assets that we are talking about are in the hands of the AG.

CHAIRMAN: The committee will look into all these things.

SCHEDULE 5 PUT AND AGREED TO.

CHAIRMAN: As far as Schedule 6 is concerned, there were already some laws mentioned here, like AG 9 which is the first one to be listed here. The lawyers have to do the research and list them.

SCHEDULE 7 PUT.

MRS ITHANA: Mr Chairman, I have a problem with paragraph 1. It appears that there are a lot of things to be done. I don't know whether they are to be done a day before independence or the day of independence or the day after independence. For example, if you look at the appointment of judges, the president to be sworn in, then we are saying independence takes place midnight. Is this midnight of the 20th going to the 21st?

CHAIRMAN: Yes, one minute past midnight.

MRS ITHANA: I think this schedule should be looked at in toto. If we approve it point by point, there are issues that are interrelated. If we approve one activity to take place before the other, maybe they will overlap.

CHAIRMAN: "The Assembly shall meet for the first time on

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the day of independence, that means on the 21st March, the national holiday. Is it possible?

MR HAMUTENYA: Mr Chairman, nothing is impossible, we can do all these things. We start at one o'clock the 21st March.

MR TJIRIANGE: It is true, nothing is impossible in the sense that when we get independence we don't want anybody to rule us from that day, so there will be a vacuum there. We will have to have our organ in place, we cannot afford to delay. So, once we put up our flag, the other one goes down and we have to think in terms of putting our people in power.

Therefore it is absolutely necessary that the Assembly meets immediately in order to do this and I don't see any difficulties with that. We can meet as the comrade has said, but once that flag has gone up, we must think in terms of putting the appropriate people in their positions.

CHAIRMAN: At what time?

MR BARNES: On a point of order. Mr Chairman, do I get the impression that the members on the other side of the House didn't caucus on these matters?

MR TOIVA YA TOIVA: Comrade Chairman, I see the difficulty here in meeting on the day of independence. People will be jubilant, and I don't see how we can meet. Some of them will not be in their proper minds, they will be jubilant and once they come here there will be chaos. So, I see difficulties here, I don't know how it is going to work. Maybe a solution can be found how people can meet on such a day.

MR ANGULA: I would like to read Schedule 7 in relation to Articles 1 to 8. I think that is where the problem starts. Articles 1 to 8 to my mind says that once we adopt the Constitution and set a date of independence, this Constituent Assembly will be deemed to have become a National Assembly, and if this House is deemed to have become the National Assembly, I think it can assume certain

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functions of the National Assembly, like the election of the president. Rather than having independence without a president, I think the Assembly can actually, once it has turned itself into the National Assembly, assume certain functions which are very necessary, rather than saying we should sit on the day of independence.

So, my position is that once the Constituent Assembly turns itself into the National Assembly it can meet any time, not on the first day of independence. I also have problems with this first day.

CHAIRMAN: When is it deemed to be the National Assembly?

MR ANGULA: After adopting the Constitution, setting the date of independence, we are supposed not to exist, according to the proclamation which established us. We can only exist after that if we have turned ourselves into a National Assembly, and I think after we turned ourselves into the National Assembly we can do whatever we want to do.

MR BARNES: On a point of order. The most important function the honourable member missed is that this act will only become an act on the day of independence. So, if you meet before that, it will be absolutely illegal and any decision that this Assembly takes would be null and void, unless another clause is added to make provision so that we can act illegally.

MR RUKORO: Mr Chairman, I was going to partly point out what honourable Mr Barnes pointed out, that this Constitution only becomes effective as of the date of independence, and secondly, when we say the National Assembly shall meet for the first time on the day of independence, I don't see us sitting here for two or three hours. The things that we are called upon to do are purely formalities. Number one is to elect a president as per paragraph (3), which will take us just half an hour, I hope. Secondly it is ourselves to be sworn in, a question of getting a judge there and in less than two minutes everybody says "Amen". Then the judges themselves are to be sworn in by the president, not necessarily in that order because I am simply listing what has to be done that day. This will take us less than an hour, or if you really want to enjoy yourselves, two hours. If we start here at 8 o'clock in the morning we will be through by 09h30.

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CHAIRMAN: Do we start at 8 o'clock or immediately after the flag is down? Eight o'clock in the morning. Decided. Who is going to be in charge from one minute past midnight until 8 o'clock?

MR DE WET: I support the idea of Mr Rukoro. I don't see any problem to follow this procedure. We can start eight o'clock in the morning. It will take us one hour and we will be finished.

DR TJITENDERO: I just want to share with you some information. We have here the question of what time between the 20th and the 21st, and I can recall the independence for Zambia, and as honourable Rukoro has pointed out, however symbolic ushering in independence is, it is important, and I recall that on the 23rd going to the 24th October 1964, that the people gathered at the football stadium and it was there that the flag was hoisted and the Union Jack was brought down.

So, as honourable Rukoro has pointed out, there won't be any difficulty for the nation of Namibia to wait for that moment, until the clock strikes twelve o'clock midnight. The other technicalities of swearing in the president, the chief justice and other officials. I do recall that we were advised by some legal experts in general discussions that this can be done. If we could identify the necessary legal persons who are empowered with legal authority by this Constitution, then all that can take place a minute after midnight, and then thereafter we can adjourn for the celebrations, people getting together to celebrate Namibia's true independence. So, I just wanted to point that out, I think the other legal technicalities have been pointed out. So, the 8 o'clock meeting should be considered seriously, but the ceremonial aspects of swearing in of the officials must take place exactly one minute after midnight.

MR KAURA: Mr Chairman, I am afraid - although I have been a teetotaler for most of my life - that day you will have to bring me in a wheelbarrow into this hall.

MR WENTWORTH: Mr Chairman, isn't it envisaged that committees will be established to programme and plan and co-ordinate these activities for the day of independence, and wouldn't these arrangements be part of the recommendations

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that these committees will make to the House? Couldn't we wait for the establishment and recommendations of such a committee or committees before committing ourselves to time and schedule?

MR KOZONGUIZI: What that idea really suggests is simply this, that this is not a matter to be discussed by us, but as you said in another matter, these things had been done before elsewhere and I suppose this is for a committee or some sort of technical people who know these things, just to find out how it can happen. All we know is that we have put here, "the National Assembly shall meet for the first day on the day of independence." We will leave that to the experts and then they can work that one out and we can rest.

MR BARNES: Mr Chairman, I accept what my honourable colleague has said, but I just want to go on record on one point and that is, I fear for this night business, because invariably what you normally do at night you are afraid of or scared of, and I wouldn't like our new independent Namibia to be scared of anything. This midnight thing doesn't appeal to me at all.

MR BESSINGER: Article 4: "The President shall be sworn in by the Secretary General of the United Nations." I think we have agreed earlier that the Judge President at the time will administer the oath.

MR RUKORO: Just clarification. I think we are running into a chicken and egg situation here in the sense that who should administer the oath or affirmation to who. When we say, I don't know by what provision, that the judges of the Supreme Court of South West Africa shall on independence day be deemed to be the first judges of the High Court of Namibia, that is a deeming provision in terms of appointment, but that does not take care of the oath. A judge must take an oath to the state before he or she can actually start his or her job as a judge. So,

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being nominated that as of today you are a judge, doesn't mean that the next day you can rush into the Supreme Court and start to work. You must take an oath of office before somebody.

The same thing applies to the president. That is why I say it is a chicken and egg situation and that is why I suspect our legal advisers, not knowing how the rest of us are going to resolve this, simply suggested and it is up to us to look at this matter, that maybe, ordinarily, the judges of the Supreme Court of any country take their oath before the president of that country, but who must swear in the president? That is why they suggested that it should be the Secretary General of the United Nations. I suspect they had a reason for this, maybe because this territory up to this point has been the responsibility of the United Nations in terms of international law and that therefore, as a continuity in terms of the implementation of Resolution 435, the top executive of the United Nations would be the appropriate person to take over the ceremony, after which everything falls into place. I think this was the consideration for the suggestion.

MR BARNES: Mr Chairman, I think the solution lies in this, that the judges can take the oath at 8 o'clock and we can get together at 9 o'clock or 10 o'clock. Why can't we invite some eminent judge to swear in our judges and then our judges can take the oath by our own people? I am afraid, when I read this article, and we have reason to be concerned, "to be administered by the Secretary General of the United Nations or his duly authorised representative", and in the case that he sends Eckhardt here I won't be here and this is the problem, that he might send some official here and I still am firm that we should not overlook our own people.

MR MATJILA: Mr Chairman, I appeal to this House that the swearing in of the new President of Namibia by the Secretary General must not be seen as an act through which our local people are being overlooked. I think it should be seen as a very historical deed by which this country at the same time obtains recognition by the United Nations. Thank you.

CHAIRMAN: That sentiment is very correct.

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MR GURIRAB: I agree totally with what honourable Rukoro said and the amplification by honourable Matjila, but because of the intervention by honourable Barnes I would propose that we delete "or his duly authorised representative and put a fullstop after United Nations."

MR WITBOOI: Mr Chairman, I have a problem and the problem is that I am not yet quite clear about when the swearing in of the president will take place, whether it is immediately after midnight or 8 o'clock, and if it happens to be that it should take place at 8 o'clock, I foresee a vacuum there, because from the time the South African Flag comes down and the Namibian Flag is hoisted, who will be in charge? Who is responsible from 12 to 8 o'clock?

Therefore I would suggest that the swearing in of the president should take place immediately after twelve. I foresee a problem. Maybe I didn't understand what you said but I am not quite clear on that issue, whether it will be 8 o'clock and if it is 8 o'clock, I would like to have an answer on what will happen, if anything happens between twelve and eight, who will be taking the responsibility for what is happening there?

CHAIRMAN: I think if the Secretary General is going to be the one to do it, there will be no problem to take it immediately after the lowering of the flag and then that problem is solved. The problem is when we are going to have one of our judges, who swears in who first? I think the problem is solved. We will request the honourable Secretary General to be healthy on that day and to administer the oath immediately after the lowering of the flag. I saw it done in Zambia that way. Normally it is done by the colonial administrator.

MR RUPPEL: We have to come back to a technical aspect of this Constitution. I referred to it when we came to the definition clause and Mr Rukoro attempted an answer which was in fact not an answer to this problem, and I would hate to see an imperfect constitution going out of this House. May I take this House then to Article 32(8)? That is the review of the president's decisions.

There is a reference in the fourth line from the bottom to "passed by at least one-third of the members of the Na-

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tional Assembly and passed by a two-thirds majority of the members of the National Assembly." Is it all the members or is it all the members present or what is it? If we don't say it here, then the court will have to find it out soon and it will mean litigation. So it is just as well that we go back to it now and decide whether that is all the members. I think the answer is really that it should be all the members of the National Assembly, it is an important matter. I think that was intended, but we should say so. I therefore propose that it should be all the members.

Then may I take you to the next one, Article 74(4)(c). It very explicitly in the first line refers to "all the members of the National Council", so that is clear, but then further down, about a third from the bottom, it refers to "a two-thirds of all its members entitled to vote." What does it mean? Present or of the total membership?

MR MUDGE: When you talk about the members entitled to vote, you are referring to the 72 members, and as was the case in the previous article, it means of the 72, two-thirds must vote. That is what it is supposed to mean.

MR RUPPEL: Just to illustrate the point, even the 1982 Principles always state exactly what is intended. They say "this Constitution shall be adopted as a whole by a two-thirds majority of its total membership." It says so clearly and we should do the same. The answer I want is to this problem of "all its members entitled to vote." Is that all the members who happen to be present at a certain meeting? It is not clear enough, because "all those entitled to vote", is it those present?

DR TJIRIANGE: Can the honourable member just propose an amendment? Say those things that you are saying, total members and then we discuss it.

MR RUKORO: I would say two-thirds of its total membership, if that is clear. But that is not the end, Article 56(2) and (3), again the same problem, it refers to "members of the National Assembly who are entitled to vote". In that case I would think it is only the members present. I move that it is stipulated that it is all the members.

MR RUKORO: Mr Chairman, I think we are confusing things here. Article 56(2) as well as 74(4)(c) deal with the

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passing of ordinary legislation. If it envisages, if we use the phrase "the total membership of the Assembly" or "all the members", does it mean that every time this Assembly wants to pass a law on pensions or whatever, at least 48 people must vote in favour of that bill? If we say simple majority of the total, I think the idea is it is either a simple majority of those present and entitled to vote, because the six nominated members are not going to vote. So it is a simple majority of those present, provided in the first place they form a quorum, whereas, for instance, the provisions of Article 29(2), which deals with the impeachment of the president, there you would not want to impeach the president with 37 people who form a quorum and 18 say yes. That is why we are talking of two-thirds of all the members of the Assembly, which means at least 48 are entitled to vote.

So, I think 29(2) should stay as it is, namely the requirement for impeachment, two-thirds of the total membership. Article 56(2), I think the "all" there should be deleted, it should simply be "of members present", just like in 74.

MR VON WIETERHEIM: On a point of order. I think we had it quite correct before honourable member Rukoro started speaking, because he is now really confusing things. He is talking on paragraphs which are really specifying two-thirds majority in the case that normal majorities are not attained.

MR MUDGE: I haven't really made a study of this, but I would think that whenever we specify a two-thirds majority there must be a reason for that, a very special reason, and if there is a special reason, then I think we must take it that it has to be two-thirds of the total membership, because it is a far-reaching decision to force somebody to sign. Therefore it must be the total membership. Otherwise, when it comes to ordinary majority, simple majority in ordinary legislation, then it must be a majority of the members present. In other words, there must be a quorum, a majority will vote in favour of. But I think in this case it must be two-thirds of the membership.

CHAIRMAN: I think it is now clear. The lawyers who must redraft got the message. We must now go back to the things we have left out. Page 69, Article 113.

ARTICLE 113 PUT AND AGREED TO.

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MR MUDGE

ARTICLE 114 PUT.

CHAIRMAN: With the understanding that there will be the creation of a security committee under Article 32, we are now discussing this.

MR HAMUTENYA: Mr Chairman, may I suggest that at the same time we are creating that Security Service Commission, also create the Central Bank and the Planning Commission, because they were left out.

ARTICLE 114 AGREED TO.

ARTICLE 115 PUT.

MR MUDGE: Mr Chairman, I am not quite sure, let's read it again:

"The President may remove the Inspector General of Police from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which might prescribe procedures considered to be expedient for this purpose."

Is it necessary to make such a provision? It is so vague, it says nothing. You must say under what conditions somebody can be removed from office. When you just say he will be removed in terms of an Act of Parliament without having any idea what the act will determine, does it really mean anything? As far as I am concerned, no. The only advantage would be that at least he cannot be removed from office arbitrarily. If that is the idea then it can stay, but leaving things to an act of parliament, important matters which we find necessary to include in our Constitution, without saying anything about the conditions, that to me ridiculous.

MRS ITHANA: In the light of the creation of the Security and Defence Commission, couldn't we put it that the inspector general can be removed by the president on recommendation of that commission?

MR KOZONGUIZI: In support of that very proposal, if we look at Article 32, the powers of the President, you would find under (6), page 30, that it says:

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"Subject to the provisions of this Constitution or any other law, any person appointed by the President pursuant to the powers vested in him or her by this Constitution or any other law, may be removed by the President by the same process through which such person was appointed."

MR BARNES: To illustrate the problem we have, on Article 114 it says "in terms of Article 32(3)", yet Article 32(3) is the very one that we are waiting for the draft by the lawyers.

ARTICLE 116 PUT.

MR KATJIUONGUA: Mr Chairman, I should know what I said on this score, I don't have to repeat my reasons, but after I make the proposal I would like to motivate why I say so by two or three points.

There shall be established by Act of Parliament a Namibian Defence Force consisting of a border guard, a coastal guard and a presidential guard, and then the functions to defend the safety of the president, etc. So, I hope that when we come to the act providing for the establishment of these individual units, then I think we will more specifically point out their functions.

The thrust of my argument is to avoid creating a formal army in a conventional sense of the word, an elaborate type of organisation. I tried to consult literature on this topic, a number of the armies as they exist in many countries of the world, and when you look at some of the schedules, it confirms the point that when you appoint the army it becomes a very elaborate organisation which, for the reasons I am going to explain, I want to avoid. I'm not saying there should be no soldiers, they should be there. That is why I feel they should have specific duties to protect the borders of our country, our airspace, our territorial waters and of course, the presidential guard for the safety of our president. Then they are not malingering, not loafing, not dreaming, they have a specific job to do. I do understand that for each of these services you will have a separate commander, commander of the presidential guard, the border guard and of the coastal guard, but overall command, control and administration will be exercised by the chief of the defence force.

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I remember in my proposal the first day I proposed also that there should be an additional committee - it doesn't have to be a committee of the Assembly, it could be a committee appointed by the president - that could work out the mechanisms, a sort of National Defence Council which will in fact assist the president in deciding problems relating to national security.

In America they have the National Security Council, in the Soviet Union and other countries they have a National Security Council, I think there is a similar body in Canada as well. So, most of the time it depends on the composition, but it could be composed by the president himself as chairman, the prime minister, the minister of defence, chief of the defence force, inspector general of police and the chief of the Namibian KGB ... INTERJECTIONS ... or any persons the president may want to have on that committee. So, when he declares a state of national defence, he has a team of people around him who advise him whether to take what action. Therefore I feel that a National Defence Council, a committee of that nature, is necessary.

But my point where I want to confine myself to a defence force of this nature, as you can see, mainly with police and defensive functions but nothing like an army in the conventional sense of the word.

When you look back at the past, you will find out the SWA Territory Force - I don't know their exact numbers - was something over 20 000 under arms. I know, of course, our Swapo-friends know better what the size of Plan was, but there has been speculation - and I am saying speculation - that they were anything between 9 000 and 20 000 men. I don't know, I say speculation.

So, if we take the maximum, let's say the Territory Force may be 22 000, Plan 20 000, 40 000 men plus police plus maybe commanders and citizen force and all these things, then it was quite a huge force in its totality as a force composed as Namibians. This is exactly what I am trying to avoid, that type of a force. I want people whose jobs are specifically described, a clear job description, that they will not become lazy and sit around and then start having dreams about other things in life.

So, therefore my point is that we should have a paramilitary force or a defensive force consisting of these components of a limited size, not an army in the conventional sense of the word. If you for example look at the organisations, the South African Defence Force and many of

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the others, the Canadian and Americans, you start from the chief of the defence force, supporting personnel, public relations, intelligence, logistics, finance and planning, all these things, the chief of the army, the chief of the air force, the chief of the navy, these are top positions, but when you go down the line of administration, it becomes a very heavy bureaucracy.

When I was in Canada, just slightly before I came there, they had the thorough-going reorganisation of the army in 1967, which caused a number of problems. The officers were unhappy, but at the end of the day it was a rationalisation actually of the services. Instead of having different chiefs, you have everything now centralised with a single minister of defence and single chief-of-staff, etc. At the end of the day they actually wore the same uniform, but maybe with different insignias.

The point I want to make is my motivation, to keep down the cost of military equipment, the cost of maintenance, the cost of development. I want to keep down and guard those costs so that any savings from these types of things can be diverted to civilian purposes, providing hospitals, clinics and things like that.

Number two: I want us to avoid political problems that could be engendered, created by a huge army or a big army, and I want to tell you that once you start those institutions, they have their own internal logics, their internal dynamics. If you say small, but you call it an army, some of these chaps will come around and say they want a jet-fighter, they want tanks, they want all kinds of toys, and at the end of the day you can't control the expenditure, and sometimes when you have no wars or no enemies around the borders that you can defeat easily, it becomes a waste of money and human resources.

So, the political problems are in discipline. When you look at the number of books I have been reading, problems of indiscipline - I remember some of my brothers here in 1964, I think Kozo at that time was in Francistown, when the mutiny took place in Tanzania. I was there, I was on my way with my briefcase to go to the Chinese Embassy, and on the way I was stopped, because the soldiers from the barracks felt the pay was too low, there were no promotions and things like that and they decided to be on the streets, and I was with a friend, Ismael, at that time, he was in Swapo, I don't know where he is now. I came back and tried to go to the Swapo House. My friend was trained in Iraq and some of these places where they have coups

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every day. So, when the soldiers came, he did like this and everything in his pocket was taken. I didn't know what to do, so I was beaten up. All these people did was to go to the bars and take bottles of whisky and beer and drinking and shouting. Mr Oscar Gabona was the minister of defence that time, he went on the radio around one o'clock and said the public had nothing to fear, everything is under control. When he just finished, we were being kicked even more by these people, and as we all know, this mutiny was put down by British troops. The time when the British troops came it was early in the morning five o'clock, from the Indian Ocean on British warships and these chaps were sleeping, because every day they were drinking and spending the nights all over town and at night they tired, they had a babalas in the morning, they couldn't get up. So, I am talking about indiscipline as a problem.

As we see in many Third World countries, you have a military veto. In many cases before they take over themselves, they create the parameters for political power and competition, "politicians, this you may do, this you may not do" and the next step is to take over themselves. In very few countries could the army solve socio-economic problems. Most of the time they co-opted politicians to accept the criticism from the public and the army will only take their place.

The third problem is to avoid professional problems, for example questions of promotion. Normally when you have a war, it is easier to promote people from a captain to anything else, but when you have a peaceful situation, it takes time, because promotion very often goes hand in hand with higher pay, and then it becomes a drain on the resources of the country.

We all know that in many countries the problems arising out of frustration, lack of promotion and all these things lead to suicide. Therefore, the other problems are the ones I referred to. There are a number of countries in the world, Costa Rica is one of those countries that many years ago abolished the army. They have police and the things I talked about. It has been one of the very successful experiments in social democracy in Latin America. So, one can do without these things. One should not have a situation that we have people who came from the SWA Territory Force, there are Koevoet-people there, there are Plan-people there and by all means we must give them jobs. I think they are our people, we cannot allow them to become jobless. Some of them that we think are professionals, have got the skills, the dedication, they can become

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professional soldiers, we can put them in this force. In this force I am talking about anything between 7 000 and 8 000 people, but not more than 10 000 in any case.

Today, as I understand, before the whole thing of Koevoet came into the picture, the existing police were entitled to have something like 6 000 posts. I understand that today they are about 3 800 and that includes a few seconded South African policemen who must go back to South Africa on independence.

Therefore the border guards and the coastal guards, we have through professional advice to find out how many people we will need in these areas, to guard our borders, that the fish-thieves who come from outside don't sneak in and protect those miles of territorial waters, and of course, at the moment the police are doing also control functions on the border. I think that should go and we should have like in Germany a force which is not exactly part of the civilian police force.

The presidential guard must be established by the office of the President, what his needs are in that particular area. But all in all I am talking about a concept, not specific numbers, that our defence force should consist of these components and be seen in that particular framework.

So, Mr Chairman, that is my contribution as to the creation of a defence force.

MR BARNES: Mr Chairman, in paragraph (2) it says:

"The President shall be the Commander-in-Chief of the defence force and shall have all the powers and exercise all the functions necessary for that purpose."

It is normally just that the President shall be the Commander-in-Chief of the defence force, because what does "all the powers" entail?

CHAIRMAN: It is qualified, "necessary for that purpose."
Agreed to.

ARTICLE 116 AGREED TO.

ARTICLE 117 PUT.

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But I want to very seriously plead with you, let us not waste unnecessary time and money if we can force people to come to an agreement.

CHAIRMAN: Could I ask a question now, if a referendum is going to be held, is it going to be by a simple majority or two-thirds? You see, you are only requesting the referendum to be held and that one must be by two-thirds. If people want to amend the Constitution they must have two-thirds majority, the whole population.

MR BOTHA: I really don't know what the problems are concerning this whole issue. Even this amendment to the Constitution seems not to actually say what I hear honourable Mudge saying at the moment. That is the problem, we are not saying what we want to say and that is why there is so much confusion. I would like to propose that honourable Mudge and Rukoro maybe draft that amendment the way they want it - it sounds as if nobody has a problem with it - and that we discuss it tomorrow, that tomorrow morning when we come in the amendment is correctly laid before us and that we then accept it or reject it.

MR MUDGE: Mr Chairman, the majority of this House does not belong to our party. In other words, the majority in the House should be very happy with the Constitution, and I cannot really see the reason why they would want to amend the Constitution.

For our part, I can see no reason why we should want to amend the Constitution, but we also agreed that very soon shortcomings might be identified, and I tell you, Sir, they are going to be identified. I have no doubt about it that within weeks after we have become independent we will identify shortcomings in this Constitution and then we might start fighting about the Constitution. Right from the start we must create machinery to resolve those problems in the fastest possible manner. Now we will not even have a National Council and somebody still has to explain to me how we are going to do this, should we within the first two years identify problems. That is why I believe that if a two-thirds majority is necessary even to request a referendum to be held, then we will be forced to sit down, like we are doing now. Sir, we have resolved all the problems by a two-thirds majority, we have written a constitution by a two-thirds majority. Why are we now

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afraid to ask for a two-thirds majority to amend the Constitution? I just cannot see why.

CHAIRMAN: It is a question of requesting by two-thirds majority, to amend by two-thirds majority. The difference is about requesting, not amending. Everybody is agreed that you must amend it by two-thirds. Nobody is objecting to the question of two-thirds to amend the Constitution.

MR KATJIUONGUA: Mr Chairman, I have listened for a long time to this debate. Can't we try to find a middle way? It says "any of the provisions of this Constitution" and it is too general. It can refer to minor things or to major things. Is it not possible to try to distinguish the areas that we think should not call for an amendment via a referendum, to be settled maybe as Mr Mudge is saying? But on the other hand I also agree. I don't have much problems with a referendum. I think it is very hard for anybody to get two-thirds, whether of both houses, whether of the whole country. It might mean that if one party can get a two-thirds majority, it means the other are doing nothing. They are sleeping, they are out of business. If they are strong enough to organise, then I think the probability of having a two-thirds majority is very complicated.

But what I am trying to do, if we can try to separate - maybe we can ask the lawyers to find out what matters we think can be resolved by the majority of the two houses and which matters may require steps like a referendum, maybe we will get somewhere. But if we say "any provision must be referred to a referendum", the referendum will cost a lot of money and it will be a waste of money. But I don't want us to avoid a referendum at all cost if there are serious matters which may require a referendum. I think the door to the referendum must also be open. That is only an attempt for a compromise.

CHAIRMAN: Maybe we should ask the lawyers whether maybe the concept of a referendum, if we left it out we will violate these principles?

MR MUDGE: Mr Chairman, consider the following possibility: We discuss an amendment of the Constitution in this Assembly. Mr Gurirab proposes an amendment. Now

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he tries to get a two-thirds majority and he fails. He can now by a simple majority force me to accept a referendum. In other words, that would mean he is actually - and please forgive the word blackmailing me, threatening me, "if you don't agree, and if you don't give me the two-thirds, I will take you to the population on a minor thing."

Mr Chairman, I want to warn you...

MR GURIRAB: On a point of order. I think honourable Mudge is missing the point. We accept - and it has been explained - that should there be proposals made for changes to the Constitution, because it has been passed by two-thirds in the National Assembly, it is passed by two-thirds in the National Council, then the National Assembly is empowered to make a constitutional change. The problem comes when the National Assembly has a two-thirds vote for inclusion of a particular article and the National Council, for whatever wisdom inspires them, sends it back to the National Assembly. There again the National Assembly takes the decision again with a two-thirds majority. Now what happens? Is it carried?

MR MUDGE: Yes.

MR GURIRAB: The issue of the referendum then comes in if you don't get a two-thirds in the National Assembly for the second time. The issue is when it gets to referendum. Where I understand the problem to lie is that we say that since you have taken this issue now to the people where they have to vote, a simple majority of that referendum result is enough to change the Constitution?

CHAIRMAN: The only problem we have here is whether you have to ask for a referendum by two-thirds. Some people say that request to have a referendum must be by two-thirds and others are saying by a simple majority.

MR WENTWORTH: I want to direct the attention of the honourable House to the original wording of the article, and to me a keyword there is the word "may". The president may by proclamation make the proposed constitutional amendment the subject of a national referendum. It is not a must. I think this is a key-issue, and the president there again will be advised by the cabinet whether he

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should. It is not that he must have a referendum. For that reason I see no reason why this original Article 127(1) should be changed. It is not obligatory, it is a decision which the president has to make, and after taking everything into consideration, and after being advised by his cabinet or by the house, then only a decision will be made.

So, I truly believe that the provision that the decision is not obligatory caters for all eventualities.

MRS ITHANA: Honourable Chairman, we are going around and around. Some of us have even gone deeper into explaining further what is entailed, what lies behind all this two-thirds, two-thirds. It is because we don't want a referendum, we don't want to see it. This is a position, we have reached it and we have been requesting the honourable House that this article was argued in the committee, it has been argued here for how many hours. Let's keep this article as it is in the Draft Constitution. That is my appeal to the House once again.

MR KAURA: Mr Chairman, my feeling is that unless you can pass with a two-thirds majority here in this House, unless circumstances change drastically, if you take it to the public you may not get a two-thirds majority, you have no guarantee of a two-thirds when you go to the public. But if you get it by two-thirds here in the House, it means you have an overwhelming consensus of the House, it is not an agreement of only one party which happens to have the majority. Consequently your chances of getting a two-thirds out there, is better, because all the parties, the majority of the parties in the House will promote that particular amendment among their members.

Consequently, if you pass it with a simple majority here, you might not get a two-thirds majority outside there. You only have a guarantee of getting a two-thirds majority out there if you get a two-thirds majority in the House, unless circumstances change so drastically that one political party would have an overwhelming two-thirds majority inside the House and outside.

CHAIRMAN: This is where the misunderstanding is. The original proposal seems to say that you shouldn't pass the

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amendment of the Constitution here by two-thirds of both houses, you must pass any amendment by two-thirds by both houses, that is agreed upon. Now the disagreement is, if you fail to get that, you want to go now to a referendum which must also be passed by two-thirds. So, the argument is to ask the referendum to be held by a simple majority. That is the only difference.

MR KAURA: The only way an amendment can go to the National Council is when it is passed by a two-thirds majority in the National Assembly. Consequently, if it is rejected by the National Council and it comes back to the National Assembly, the National Assembly had a two-thirds majority. Consequently, with that very same two-thirds it will refer it to a referendum.

MR BARNES: Mr Chairman, I especially listened to the honourable member Mr Wentworth, and the operative words are "the president may call out a referendum." What we are requesting here is that if this House, each of us sitting here, makes up the House of 72, each of us here agrees by a two-thirds majority, just think of it, and those of you who want to close your eyes for a minute if it is going to help, be my guest. If we for one minute think that the majority party on that side and the majority party of the democratic party, which is the opposition, amongst us.... INTERJECTIONS. I know it sounds confusing that I say the majority party of the opposition.

MR HAMUTENYA: I want to ask the honourable member to withdraw what he said, the allocation of democracy must be withdrawn.

MR BARNES: I withdraw peacefully, the majority party on that side which is the ruling party. INTERJECTION. Let me leave the democracy out, the ruling party, the majority party and the majority party of the opposition, because we are together as an opposition. INTERJECTION. I will withdraw the word "majority", I will start again.

Mr Chairman, if the majority of this House agrees by two-thirds majority to change the Constitution, that means that two-thirds of these members have agreed to an amendment that we think is important enough to amend the Constitution. Now we agree by two-thirds, the members of that side and the members of this side in the National Assembly. Then we have taken a decision collectively, because not one of us can do it on our own, we need each

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other for a two-thirds majority. That is a fact. By that two-thirds majority we have agreed in the interest of the country to amend the Constitution, but now the National Council does not want to agree with us. What then?

Then it comes back to the National Assembly that was the original functionary to change the Constitution. Now all the National Assembly has to do, it already agreed by two-thirds and by the same two-thirds they request that the president call out a referendum, but then the president is under an obligation to call one out. This is the beauty of the changing of the Constitution, because the president will have to, at the request of two-thirds of these members, which would be the majority collectively, consult the people.

MR MATJILA: On a point of order. I would like to help my colleague here, if he would agree. I am trying to get this thing expedited, because I see that it is nearly time to adjourn.

The honourable member Kaura in his proposal inserted certain words into this particular article, and from what I could learn from certain members in this House, they would actually vote for the retention of the entire Article 127 as it stands, that a proposal here by the honourable member was the insertion of "the National Assembly by a two-thirds majority will request the president." I think these were the words that were inserted. I think I would propose that rather than saying, "the National Assembly by a two-thirds majority will..", rather use the word "shall" and say: "The National Assembly shall by a two-thirds majority request the President."

MR RUKORO: Mr Chairman, earlier in the day when honourable member Mr Barnes said we misunderstood the proposal and that it was nothing substantive, it was simply a question of procedure, a way of trying to get a mechanism to refer the amendment from the National Council to the president, but via the National Assembly, I almost believed him, but I think the debate which went on here clearly suggests that it is not a matter of procedure, it may be something substantive, because if it is a question of procedure, then I think honourable member Nahas Angula's amendment that the request for a referendum should not be by two-thirds but by simple majority should have sufficed. The fact that it is not being accommodated clearly sug-

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gests that this is another proposal, a substantive one, and not really simply a question of procedure and mechanisms. That is the first point I wanted to make.

Then I think we are trying to simplify this thing to a point where it is going to become too difficult to comprehend in the sense that why do we assume that simply because I voted for this bill during the first time around before it went to the Council, necessarily and for ever I should vote for it the second time around. There is no such thing.

That is why I feel that the argument does not hold water that you have two-thirds already, therefore there is no problem, because the two-thirds the second time around does not relate to the amendment, it relates to the request for a referendum.

If I have to take the example given by Mr Mudge earlier on, on whether to change the Constitution from 18 years to vote or 16 or 17, I may have voted in favour of the amendment, namely let's give 16 year olds this thing, but if it should come back and now you are suggesting to me that because of this petty thing we should call a referendum which must run over three, four days to determine whether it is 16, 17 or 18, I might just feel this is too much, I am not going to vote for this.

So, if it is really procedure, a mechanism of one house, it should go back to the other house, let discussion and reconciliation take place between the houses and if there is a breakdown or no agreement, let's have the referendum, then I think honourable member Angula's proposal for a simple majority should be considered seriously. If it is not, then it is a substantive change and in that case I would really move that we go back to the original position on which we agreed in the committee.

DR TJIRIANGE: Thank you, Mr Chairman, honourable Rukoro has said much of what I wanted to say. My fear of accepting the amendment as proposed now, is that there will be no referendum at all. Maybe we are missing the ball by not understanding the inner manoeuvres of this whole article here.

When the National Council has refused for one reason or another to accept a bill which was sent to it by the Assembly by a two-thirds majority, and it comes back, and

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the Assembly re-adopts it with a two-thirds majority, the bill is kept, there is no problem, there will be no question of a referendum. It is only when for the second time the National Assembly adopts it with a lesser majority. At that time you are now asking, if some people who have voted first for the bill, have changed their minds, there is no way that they can vote again to make a two-thirds majority to ask for a referendum outside. Therefore you can just forget about a referendum if you go by a two-thirds majority. Once they did not vote for the bill the second time and they have changed their votes, there is no way they can vote to make two-thirds for you to take the bill to the referendum.

Therefore I think this is something that is very fundamental to us, we want the people to have a say in determining the fate of this Constitution. Either we go back to the provision that we had or we meet each other halfway, and this is the halfway, a simple majority.

MR MUDGE: Mr Chairman, I am sure that we might now be falling in love with our own proposals, and it might become more and more difficult to reach consensus. So, I frankly think that we should sleep over this issue.

I want to ask a question which has not been asked so far. We will probably only have a National Council within 2½ years from now. Has anybody in this Assembly got a very clear idea how we are going to amend the Constitution in the meantime? Have you ever thought about that? Talking about a simple majority asking for a referendum, there might be more than one reason for asking a referendum.

The honourable Mr Tjiriange just now indicated they want the people to participate. So it is not a matter of amending the Constitution but of wanting the people to participate. We are now reaching a stage where wrong perceptions can be created. The one perception is that some members badly want to amend the Constitution, I don't believe that, I frankly don't accept that, but this is the perception that could be created in this debate.

Another perception that could be created is that some of us don't want to amend the Constitution at all and this is also wrong.

Mr Chairman, I personally believe that we must sit down together, as we have done on so many occasions, and solve

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this problem, taking into account the fact that we don't have a National Council and we will not have one for at least two years. So, I want to know, if we would accept as proposed that a simple majority can ask for a referendum, and then later on we will have to decide what would be the position during the transitional period, from now until that National Council is established. Should there be a request from this House to amend the Constitution and we cannot get a two-thirds majority, will it then be possible for a simple majority to ask for a referendum? This is not really what we had in mind.

As matters have developed in this debate so far, I want to be frank, I might consider going back to the original proposal, because as things develop now we are making things even worse. So, I want to suggest...

MR KOZONGUIZI: On a point of order. Are we extending the session beyond 19h00, which is the agreed time?

MR MUDGE: Then I immediately want to propose that we adjourn. I can see no point in discussing this issue any longer. We have solved many problems, and I was under the impression that there are members who have proposals that we could consider and I want to ask very seriously that we adjourn and that we meet again tomorrow morning.

The one answer I want to have before I would be prepared to further consider this, I would want to know what is going to be the position during the first two years, during the period that we don't have a National Council. How are we going to amend our Constitution during this interim period?

MR KOZONGUIZI: Mr Chairman, I seem not to follow what exactly is happening. The only person I could follow was the honourable Mr Wentworth, because as I see it here, there may be something else. What it says here that in the National Assembly we get two-thirds majority, it goes to the National Council to confirm the two-thirds majority. If that does not happen, i.e. if the two-thirds majority in the National Council is not obtained, then Article 127 says the President then may call for a referendum. That is what it says.

What I really cannot understand is that which we want to take out and put in. Is it so that it has to be requested that a National Referendum be held, rather than the

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President on his own coming to the conclusion he would have to have a Referendum. This is what I don't understand, because the President may do so if the National Council does not obtain the two-thirds majority.

What I don't really understand is where does this thing of request come in? Do we want to take away that "may" and say it is done at the request of the National Assembly. Maybe the honourable members can help me out there.

CHAIRMAN: I want to appeal to the honourable House, if I say the following things you may agree. Firstly, we don't want to change the Constitution, all of us sitting here. Secondly, we kind of entrenched certain things that cannot be changed by amendment. There are certain basic fundamental rights that cannot be changed even by two-thirds. We have covered ourselves. Now we are saying that besides that, if we want to amend we must do it by two-thirds of both houses, and even by the two-thirds we are covered. Only if you have to ask for a referendum you must go by simple majority.

MR KATJIUONGUA: Mr Chairman, I take the risk of requesting the House that it looks like the proposal for a two-thirds majority and a simple majority now becomes risky for everybody. Let it go as it stands.

MR BARNES: We have reservations on the matter as it stands, Mr Chairman, and I request that we are allowed to caucus on this and see if we can find an acceptable proposal. But for the time-being... INTERJECTION. Who am I representing on this side? I go on record to say that we request that this matter stands over until tomorrow to afford us the opportunity. We have made a proposal which wasn't accepted, which we feel is in the best interest, with the idea to permit referendums. I want to go on record, we are not against a referendum, but we are not for a simplified way to change the Constitution at every given time, and on that issue I request that we on this side of this side of the House be afforded the opportunity to sleep over this tonight and then come back and discuss it tomorrow.

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MR ANGULA: On a point of order. Mr Chairman, I just want to remind the House and those who were not in the committee that when we agreed on this Article 127, amendment to the Constitution, it was a kind of a package deal, because it is an entrenched clause. That article is entrenched, you cannot change it. That should be taken into consideration that it is a package deal.

MR GURIRAB: On a point of order. The honourable member Mr Nahas Angula is reopening the debate. I rise to propose, Mr Chairman, that if Mr Barnes, either as an individual or as a member of the DTA, would want to enter a reservation, that it is quite in order, but we cannot reopen the discussions.

MR MUDGE: Mr Chairman, I hope I will not embarrass my colleague, Mr Barnes, I have tried my best to get this amendment in this specific article. I have put up a fight because I thought that it was necessary to make sure that this Constitution shall not be easily amended. I was hoping that we can achieve an arrangement where consultation between the two houses could make it possible to solve this problem without a referendum, and I was hoping that I could prevent - and I want to be very frank about it that for other reasons a referendum could be forced upon us for reasons that have nothing to do with the amendment of the Constitution.

I tried my best to prevent such a situation, but without success. It is now clear to me that some of the other parties - and that is of course their democratic right - are also in favour of the proposal as it stands now, and for that reason, and this will not be the first time that I have been prepared to meet my colleagues in the House halfway, and they have done it as well, and we have done it without being afraid that somebody will call us inconsistent just for the honourable member who tried to score a point on that one. For that reason I will not at this stage record a reservation. The DTA-caucus will meet immediately after this meeting. We accept that you will now approve this article, and if we want to make any announcement we will do it tomorrow morning. So, as far as I am concerned, you can continue.

ARTICLE 127 AGREED TO.

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MR MUDGE: Before you adjourn, there was a matter outstanding about the minutes that you promised to consult on the deputy ministers, whether they should come from the members of the Assembly or not, and then I would want to make double sure about the points raised by Mr Rukoro about the period within which elections will take place for the Regional Councils and the Municipal Councils. Will that also be included in the final draft? Then of course the question of laws that must be repealed.

CHAIRMAN: As for the elections, I think as we were talking here the lawyers were taking notes. As for the minutes, the minutes aren't public, so therefore I was trying to consult my memory. It looks like the deputy ministers must come from within the Assembly.

MR RUPPEL: Mr Chairman, I just want to sound a note of caution. There are a number of loose ends and I suggest that we just come together once more for an hour to see whether we have forgotten anything, before there is a final wrapping up. For instance, yesterday, we bravely cut out a sore point in this Constitution which was dealing with preventative detention, Article 11. In that very article we constituted an advisory board to which reference is made later on two occasions in the Constitution. I am referring to Articles 24 and 26. As matters stand at the moment, there will be reference to an advisory board, to Article 11(5) and (6), 11(5) and (6), not being there anymore.

So, I have a draft on that available, I would like to look at it and place it before the House.

CHAIRMAN: The lawyers can look at that.

MR RUPPEL: If that is the instruction I will give it to them. I just wanted to raise it.

MR HAMUTENYA: Mr Chairman, I rise to extend an invitation to members of this House to come here tomorrow at 10h30 to decide on the flag. There are designs available and we have to decide now, since the people who have been given the mandate want to proceed with whichever one we choose. There will be basically about four designs which the subcommittee has selected from the 700 and I would

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like you to come and look at them and decide. Thank you.

MR MATJILA: I want to request that the press will not be present.

DR TJIRIANGE: From the independence of other countries I attended, sometimes the flag comes as a surprise. So, I don't know whether this one will be known beforehand. I have seen almost in all the places that even the colonial power didn't know what kind of flag was going to go up. So I don't know, are we going to be different from that or not?

MR RUKORO: Just for my own information, is the press going to be in or out?

MEMBERS: Out.

MR RUKORO: I don't understand why they should be excluded because this is part of the constitutional debate. The arguments that have been advanced up to now really isn't convincing.

CHAIRMAN: We are just going to choose. Why should they be left out?

MR MUDGE: On all the other points they could listen to the debate and the flag as well.

MRS ITHANA: I think we are not being systematic. This question of the flag came in the middle of another topic that was just introduced and we have not reached an understanding or agreement on the status of the deputy ministers, as far as their relationship with the Assembly is concerned.

CHAIRMAN: The committee members must go and read their minutes, because a decision was not taken. There was a debate as usual, people making their statements and a strong statement there by one member is that they must come from within the National Assembly.

MRS ITHANA: I raise this issue because it does not just end with their membership of the National Assembly, it goes further than that, because we said, which I can re-

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member very well, that members of the cabinet should be members of the National Assembly. By that I understood it meant the ministers. If the deputies are not members of the cabinet, then obviously they do not fall within the requirement. That is the argument and as far as my recollection is concerned, I do not remember us deciding on deputies. I remember we talked about six appointees and the status of the members of the cabinet to the National Assembly.

MR MUDGE: Mr Chairman, if the honourable lady wants to rely on the minutes and what we have decided, she is going to lose that round. If she wants us to discuss it again, she might win. I can promise you that.

MR VON WIEFERHEIM: Just a question, are we sitting tomorrow or not? As happy as I am that we are ending this debate this afternoon, I think we must not forget that our honourable colleague Mr Mudge would tell us tomorrow about their attitude, and I think most important, to answer the question about the first 2½ years in respect of the non-existent second house in respect to changes to the Constitution.

CHAIRMAN: The flag is supposed to have been considered and chosen by the standing committee. The standing committee then comes to report and in the article we describe the flag and that is when the Assembly is going to adopt the whole Constitution. So it is the committee who will go and choose the flag and bring it here. The press is allowed.

MR ANGULA: You can rule me out of order, I am not talking about the flag, I am coming back to the deputy ministers. I think we should consider this question. Given the smallness of our country and the problems of getting appropriate experts, some of these people are required to have certain experience in certain areas and I think it will be a mistake if we put that condition that they must be members of the Assembly.

MR MUDGE: Are we going to discuss the deputy ministers or are we not going to discuss them? I want to know what is the procedure now. There is a suggestion that we meet again tomorrow to discuss a few outstanding matters that

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we haven't discussed, or are we going to discuss them now, because I have a lot of arguments to counter the honourable member Angula's argument.

CHAIRMAN: The Assembly will meet tomorrow to discuss all outstanding matters.

ADJOURNMENT OF ASSEMBLY

On the motion of the Chairman, the Assembly adjourned at 19h30 until Friday, 2 February 1990 at 10h00.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
2 FEBRUARY 1990
10h00

The Assembly met pursuant to adjournment.

RESUMPTION OF DEBATE ON DRAFT CONSTITUTION

CHAIRMAN: We resume our discussion of the Constitution. We finished the Constitution yesterday, but we decided to come and tie up the loose ends and look at the outstanding issues not yet finally resolved.

MR MUDGE: Mr Chairman, I don't want to raise a new matter, I have indicated yesterday that the DTA-caucus will meet and that we will come back today and inform the House whether we have reservations about the article dealing with the amendment of the Constitution.

I can now inform the House that after having discussed this last night after the session, I was requested to convey to the House the following: First of all, that we very much appreciate the fact that the House was prepared to entrench the Bill of Fundamental Rights, the articles in the chapter on Fundamental Rights, the way it was proposed by the honourable member Kaura, and at a later stage amended and even improved by other members of the honourable House. I want to express our appreciation for that.

As far as the amendment of the Constitution is concerned, we also want to inform the House that we will not reserve our position and that we, in other words, accept the proposal or the provision as it stands in Article 127. We did so in the spirit of the deliberations so far, a spirit of give and take. We are prepared, in spite of the fact that we still have some reservations, some problems to accept the article as it stands.

Sir, I cannot let this opportunity go by without bringing it to the notice of the people of Namibia that in this House a party that could have been outvoted easily was allowed about five hours to state its case, and Sir, that I think is a victory for democracy, and my party wants to express their appreciation for the fact that we were at no stage limited as far as our opportunity to discuss this

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MR MUDGE

matter was concerned. Thank you.

MR RUKORO: Mr Chairman, Article 12(1)(c) on page 12. You will recall that two days ago, if I am not wrong, this matter was raised by honourable member Mr Matjila, namely that judgments in criminal cases shall be given in public except where the interests of state security, juvenile persons or morals or otherwise require, and that I intervened by quoting Article 14 of the Civil and Political Rights Covenant, and therefore suggesting that the article should remain as it is because it is consistent with international standards. But my attention has been drawn to the fact that actually I did not quote the whole of Article 14, I only ended somewhere in the middle. If we go on, there is a qualification indeed which supports Mr Matjila's point, and Article 14 of the Covenant says:

"...but any judgment rendered in a criminal case or in a suit at law, shall be made public, except where the interest of juvenile persons otherwise requires, all the proceedings concerning matrimony disputes or the guardianship of children."

What it boils down to is what honourable Matjila has proposed, namely a deletion in line two of the phrase "state security." In other words, while the trial itself can be in camera for the reasons stated in the subsection, the judgment must be made public. So Mr Matjila was right.

CHAIRMAN: So decided.

MR RUPPEL: Honourable Chairman, it concerns the judicial structures, and more particularly the Supreme Court. As it is in the Constitution at the moment, we have provided for a Supreme Court which will be coming into existence in accordance with an act of parliament. This may mean that we don't have a Supreme Court for a considerable time after independence, which in turn may very well lead us into a situation where we find ourselves in a constitutional crisis very soon after independence.

So, I suggest that, like we have done with many other institutions, we actually establish the Supreme Court in the Constitution itself and leave further details perhaps to the legislature if it wants to provide further details for

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MR RUPPEL

the operation of that court, but essentially to provide for the Supreme Court to be established in this Constitution and to give the powers to make rules for the operation of the court to the Chief Justice and the other judges of the Supreme Court. That is the usual practice and it does not in any way take the powers away from the future parliament to legislate if it wants to in relation to the Supreme Court, but that at least we have a Supreme Court. I think that is important for the smooth operation of this Constitution in the future.

If there is no objection in this House to this proposal, then I would ask this House to ask our legal experts to provide the necessary formulation without changing the principle as it is at the moment, already contained in the Constitution. I don't think it is a controversial matter, but it is of great practical consequence. Thank you.

CHAIRMAN: Any objection? Agreed.

MR MUDGE: Mr Chairman, I just want to refer to Article 123(1) under the Chapter 15, Finance. It refers to the State Revenue Fund of the mandated Territory of South West Africa instituted in terms of Section 3 of the Treasury and Audit Proclamation, 85 of 1979. I just want to ask the lawyers to determine whether it is correct that this fund is instituted in terms of this proclamation. I have a feeling that this is not correct. This is just a technical matter that I want to refer to the advisers.

MR ANGULA: Thank you, Mr Chairman. I would like to draw the attention to Chapter 6, Article 37. I want to propose a very minor amendment to read as follows:

"The President may appoint from within or without the members of the National Assembly such deputy ministers as he or she may consider expedient."

Just to add "from within or without."

MR BARNES: Mr Chairman, it was agreed that we will not go back once a decision has been taken in principle, that we

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could discuss the articles, but this is a principle decision. From day one we agreed on this side of the House, we went on record to say that we were absolutely against nominating members. You will, of course, allow me to give my reasons for opposing such a motion.

Mr Chairman, we have over the years been accused of not being elected by the people. It is our firm conviction that it is wrong to nominate people except - and this is where the DTA again demonstrated its willingness on the basis of give and take, on the basis that we want to promote national reconciliation and peaceful co-existence. When the decision was taken, the DTA here made a major concession, taking into cognisance that there may be a necessity to appoint people to a cabinet or to appoint deputy ministers for special reasons, such as expertise, professional qualifications. The DTA took particular note of the importance and not to curbe any president, whether it be the present president or future presidents, to make provisions that those people can be used in the best interest of the country. The DTA made the concession providing for six nominated members, but those members the president has the prerogative, he has a carte blanche to nominate six people of his choice. But Mr Chairman, surely there is a limit to what one can do in nominating people that did not have perhaps the courage of their conviction to get the support of the people to be elected members.

Mr Chairman, we on this side of the House for years have gone through the political punishment of being regarded as puppets, because we were nominated into these various institutions. Again I want to say, this is a principle that is being amended. We on this side of the House can never support that, because it is in conflict with the concept of elected members, it is already in conflict with the 1982 Principles which says - and I can quote it by heart - an elected executive, not nominated executive, an elected legislature, not a nominated one. But we took cognisance in the spirit of give and take, in the spirit of co-operation, in the spirit of all these things that it is important to our country, our government and our president, and we afforded the president six people and we specifically said on the grounds of expertise, on the grounds of special abilities.

Now the honourable member Mr Angula comes, and in passing I may refer to his dress which is quite inconsistent with the Standing Rules, he comes and he expects of us to support a proposal that more than six people can be nominated. I am afraid we can never support that. It is in-

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consistent with the spirit of the 1982 Principles and the DTA has conceded in making a contribution to a good and successful government.

Therefore, Mr Chairman, this is a principle change and if we are going to backtrack on principle decisions that have been taken - we have already had one experience and I am not going to mention those things which cause a spirit that would damage the very good spirit that presently prevails in this House. But we have to take note that once we start going back on principle decisions where a concession was made, to force more concessions, we on this side of the House - and I want to go on record - can also start looking for decisions.

Yesterday we were firm just to demonstrate our sincerity and our desire, we were firm on 127. We came this morning and we said in a gesture of give and take we will accept Article 127 as it reads. So, Mr Chairman, I would like to appeal to the members not to start going back, because that is not a one-way traffic and that can just bring us back to the position that whatever we have built up could be destroyed in the process, and this would retard the most important event in the history of our country and we are desirous that our freedom and independence have to come as fast as possible I thank you.

MRS ITHANA: Mr Chairman, I would like to appeal to the House that we keep calm as we have been doing the past few days, and look at issues from a practical point of view. I hope when we are deciding here we are not retaliating because of our past crimes of being puppets or whatever, but deciding on issues that will guide the government, the legislature and all the machinery of the state to function. So, reference to what has happened to us in the past should not prevail over the decisions we must take here.

Mr Chairman, maybe my memory is short. When we were discussing I honestly believed we were discussing the accountability of the cabinet to the legislature, and therefore, in my understanding we reached an understanding that ministers or members of the cabinet should be members of the legislature, meaning that whoever is going to be appointed to become a member of the cabinet, must be within the parliament or within the six appointees. That was a relationship between cabinet and parliament.

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MRS ITHANA

We have taken a decision consequently to that, that deputy ministers and all other officials in Article 35 are not members of the cabinet and deputy ministers exist because of ministers. If the requirement should be that they must also be members of parliament, to account for what when the ministers are there? The ministers are there to account for their activities, to represent their ministries. Deputies are there to do what to the legislature? To my understanding a deputy minister is only to act in the absence of a minister, and therefore the link that we are trying to create is false, unless it is being propagated to take the interests of a certain concern. But deputy ministers to me are not necessarily supposed to be accountable. They are accountable to the ministers and the ministers are accountable to parliament. That is the logic, and for us to put up an argument that the deputy ministers must be drawn from parliament, I find it somehow inconceivable. Thank you.

MR HAMUTENYA: I thank you Mr Chairman, like honourable member Mrs Ithana I do not remember us having taken what honourable Barnes has called a firm decision on this issue, and I tried to find that decision in the minutes of the committee's deliberations and I do not find it, it is not there. I do not believe that we made any decision.

Having said that I would like to say that I support wholeheartedly the line of argument put forward by honourable Ithana, that really the deputy ministers are just administrative assistants to the ministers in the execution of the tasks, the implementation of decisions taken by the cabinet and only in those instances when they are advised to participate in meetings about planning and policy implementation will they be required to be with their ministers so as to help them in the implementation of decisions taken. They not being members of cabinet, there should be no requirement really to make them members of the National Assembly.

The argument advanced by honourable Barnes, the unfortunate accusation of DTA and others being puppets does not apply here. The South African Government is no longer going to appoint these deputy ministers. It will be a popularly elected president of Namibia who will be doing the appointments, so there is a slight difference there in terms of the mandate to appoint the deputy ministers.

I therefore support the amendment as tabled by honourable

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MR HAMUTENYA

Angula which simply says that the president should have the freedom to choose or nominate deputy ministers from without the Assembly.

While I have the floor I would like to complicate the matter a little more if you will allow me and link this argument to another amendment to Article 35 on the first line. In Article 35(1) we should include after "Assembly", "and the National Council." The president should also be allowed to nominate cabinet members from the National Council. I think that was an omission on our part.

CHAIRMAN: There is some technical problem. Firstly, members are not elected, as honourable member mentioned, they come here on the party list. There are 72 members of the Assembly who will come that way. Then we have allowed six members to be nominated. Let's assume a situation where the president has used that option of six appointed members, then we have 72 plus 6 in the Assembly. Then he takes the option again to nominate deputy ministers from outside. We are going to have more than six non-members in the Assembly. We were therefore saying that the president must use from the six. It was in the draft that the deputy ministers could sit in, and we took it out.

MR TJIRIANGE: Mr Chairman, I am trying to help out in my own limited way, including helping the Chairman.

I think what we are trying to say here is that if the president has to nominate people, six people, he may have certain things in mind: One: He may take into consideration the diversity of the society and try to accommodate certain interests. He may bring people from maybe commerce or maybe labour. That he has to do through these six. From the same number he may like to bring ministers, somebody whom he thinks is capable of heading a certain ministry but who is not in the House. So, he may bring that person, nominate him again from the number of six and make him a minister, the underlying criterium being that this person is a member of the cabinet and the cabinet has to be drawn from the House. Therefore, in order for him to nominate this person from outside, he must at least bring him into the House from this number six. Since he cannot have a minister who is not a member of the House, he must nominate this minister from outside from this number six and bring him to the House in order to qualify to be a member of the cabinet.

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DR TJIRIANGE

But since the deputy ministers are not members of the cabinet, there should be no linkage, their nomination should not be linked to their membership of the National Assembly. They are not members of the cabinet, so therefore it is possible to get deputy ministers, if he so wishes, from the members of the House or from elsewhere.

If you now say, for example, the president has already nominated three ministers from outside, and you also extend this number six to cover the deputy ministers, who by definition are not members of the cabinet, then I think we are running a very thin line.

I am not saying whether we agreed on this or not, this Constitution is our child, if we have done something which we think is not in the interest we can always address it, it is not too late. For example, honourable Dirk Mudge the other day brought a wonderful point here which we overlooked, about the Public Service Commission. After looking back he found there was something wrong and we agreed. In that spirit we are doing this as well.

I think it will not be beneficial for this country if we only have the number six to play with. There are so many interests that have to be taken into consideration that could be accommodated with that number.

We can easily bring the ministers, the deputy ministers into the service without touching this number, without fishing from this number, because there is no requirement for them to be members of the cabinet. Why should there be a requirement for them to be drawn from the National Assembly?

We are legislating for this country with all its shortcomings. We have 72 people in this House who have come through the party list. The criteria of us being put on that list are different. Maybe I was a good stone-thrower or maybe I have been a veteran and I am being brought here because of my contribution to the struggle. The criteria are different, but that does not mean that I am a good administrator as a minister. So, the president has to have the right to use the number of six.

These deputy ministers are to be in the government in the form of helping the ministers, and we may need their expertise. Take for example the field of agriculture, of finance. We may not have people of that caliber among ourselves. The minister is an administrator and you may like to have a strong bureaucrat to help the minister in

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the form of a deputy minister. So you go and fish outside. He is a strong bureaucrat within the government, but he is not required to be a member of parliament and he is not a member of cabinet. He is a big brain within the ministry. Why should you not allow such a kind of thing to happen for the benefit of the country? Does it cause any insurmountable problem to have a deputy minister who is capable and who is not a member of this House to help the government function properly, to serve the government of the day?

I think we have to look at this issue in the light of the benefits to this country. If we have agreed on that, we might have been myopic. I appeal that there is nothing wrong to have a deputy minister who can make the ministry so effective, who can help the minister to do his job effectively, even if he is not a member of this House and to be nominated by the president. We are not saying that the president will go out of his way to nominate twenty or thirty unnecessary people. There are sixteen ministries, there will be sixteen deputies and we are playing with that number. So there is no burden on the resources here. I think we are fearing something that does not exist.

I appeal to you, Mr Chairman, and through you to honourable Comrade Barnes to consider this very, very humble request from me that tomorrow, Comrade Barnes, when you are going to be a president I will allow you to nominate your deputy ministers.

CHAIRMAN: Before I give the floor to honourable Angula to answer my question, now I understand the deputy will not be a member of the Assembly? When you are a deputy of somebody, in that person's absence, don't you go and represent him in cabinet? What will be the duty of a deputy minister if a minister is sick or absent? He will take over?

DR TJIRIANGE: Take for instance the deputy minister of finance. There is no harm, this man is a bureaucrat, he is a big brain in the ministry, he knows everything that is going on and there is no harm for that person to come and address the House when issues of that particular ministry are being discussed. He can give directions of his ministry, but that does not mean that he is necessarily a member of the cabinet or a member of this House. He can be called by the president any time.

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MR ANGULA: Mr Chairman, I will use one minute first to appeal to honourable comrade uncle Barnes and to apologise about my dress, but I also want him to look at his right as far as my dress is concerned. If you can look to your right, then I think you will sympathise with my situation. LAUGHTER.

I would like to clear up some small misunderstandings. My proposal does not in any way contradict the letter and spirit of the 1982 Principles, and I would like to draw the attention of honourable Mr Barnes to Article 27(2), that the executive is made up of the president and the cabinet. That is how they define the executive. So, we have decided in Article 35(1) that the deputy ministers should not be members of the cabinet. So, there are no violation of the 1982 Principles in terms of the elected executive. The executive will be elected.

Secondly: This proposal is made in the context of what we have decided earlier, that the president will be elected directly by the people. I would like to imagine a situation whereby the president might be elected by the people but may not command a majority in the National Assembly or parliament. Why should you deny that president, who is so popular, as far as the people are concerned, to nominate at least deputy ministers from whatever expertise and experience there are in the nation?

Then there is also the principle of what we have declared ourselves, where you say we want Namibia to be based on democracy, etc. It is a question of participation. We want also to spread out the possibilities for many people to participate in the government. We are just 72 members elected to this Assembly, but if you look at the population of Namibia, we are more than one million. Why should we not give a chance to somebody who has the requisite expertise or experience to serve the nation in his capacity?

My amendment does not actually say that all the deputy ministers should come from outside. My amendment says "within or without". If the president so chooses he can even take from within the National Assembly, but we are trying to give a small option here whereby deputy ministers may come from without the House in order to create the possibility of other people participating who were not able to be elected to this House or to the second house.

So, this is not really a retreat from whatever principles we agreed upon. In the first place this particular item was left hanging. You will remember yesterday afternoon

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before we adjourned we started talking about this, and then we were advised by the chairman that we are going to come back to it this morning. So, it was in that spirit, I am not trying to reopen anything at all, I am just trying to put some rationality to our Constitution, which we don't want to amend from time to time. We want it to be a document which is of value.

Then I want to answer a question asked by the honourable Chairman about the status of deputy ministers. First, to say that a deputy minister does not automatically become a minister when the minister is absent, it does not happen that way. In some cases where the minister is absent the minister will ask another minister to take over the responsibilities of the ministry and the deputy minister will remain a deputy minister. I think that is normal practice, at least in the countries I know. INTERJECTION. If you want to be unique, we can also be unique.

Secondly I would like to concur with honourable Tjiriange that this House, at its own discretion, can actually request anybody to appear before it to answer questions. We said the decisions of the president can be reversed, revised and corrected. What if one of the deputy ministers have done something which the House wants to query in order to correct that situation? That deputy minister will have the right to defend himself, so he will have to appear here if you are going to correct his situation. I don't see a contradiction there.

This is just a simple, minor addition to this article to accommodate the principle of democratic participation, if we mean what we want to mean by democracy, to allow as many people as possible to participate in their government. Thank you.

MR KAURA: Mr Chairman, as I indicated yesterday, I have been a teetotaler all my life and I would like to be wheeled in here on the 21st on independence day in a wheelbarrow, but it seems as if the honourable gentlemen on the other side are delaying that process while I am in a hurry to get there.

What I am trying to ask the honourable gentlemen on the other side and my learned friend on the left hand side is the fact that we cannot have selective democracy. We want democracy when it suits us and we don't want democracy when it does not suit us. We must be consistent.

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MR KAURA

It was argued yesterday eloquently in this House that we must always go back to the people and get the mandate of the people by way of a referendum. That was argued eloquently, and again the previous speaker eloquently argued yesterday that even those of us who are sitting in this House, the 72 members, in view of the fact that we are not elected directly by way of constituencies by the people, in essence we are not representing the people directly, we are representing them indirectly, because we were elected on party lists. He was even questioning the democracy by way of which the people in this House were elected, and now he is trying to convince us to accept nominated people from the streets; the president must be given the option to nominate ordinary people from the streets who were not even elected by way of party lists. You cannot practise selective democracy when it suits you and when it does not suit you, you just let it slide. It can't be like that.

The president has been entrusted with sufficient powers to nominate ambassadors, director-generals of planning, inspector general of police, chief of the defence, chief justice, judge president of the High Court, all the judges of the Supreme Court, ombudsman, auditor-general, etc., the governor of the central bank and all that. These are people with expertise and under the law the president's hands are not tied to use all these people and we are going to have international representatives who are going to be attached to embassies, etc. So, consequently a lot of people will be drawn in to participate in this democratic exercise. But when it comes to representatives of the people, they must be elected, and the president already has the prerogative of nominating six people to become members of the National Assembly and out of whom he can nominate deputy ministers. How many deputy ministers do you want the president to nominate? Do you want more than six to be nominated? Then be explicit. If six is not enough, let's give the president the prerogative to nominate ten people. Then that is a different thing altogether, then we shall be renegotiating the Constitution.

We shall have to renegotiate the Constitution, we shall have to send it back to the Committee, because we have already agreed on six, and you can't by way of another conduit try to increase the number of six.

What I am trying to say is this, Mr Chairman, let us be consistent, the president can already nominate six, they can all be deputy ministers, I don't care, that prerogative is there. How many more do you want? We are not here to debate the status of the deputy ministers, and it seems as if there is a confusion. We are back and forth,

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debating the status of the deputy ministers. The status of the deputy ministers is not in controversy here. If you want to have controversy over that, the honourable Mrs Ithana, could have done that in the committee, she is a member of the committee. But you have brought us this package here and it is finished and the position and the status of the deputy ministers were agreed upon and it is not in question at this juncture.

But let us not be selective in our practice of democracy, let us be consistent. The president has six he can nominate. If you want more than six, let's open the negotiations right from the beginning and we send the whole Constitution back to the committee.

BUSINESS SUSPENDED AT 10h40 and RESUMED AT 11h00

PROF KERINA: Mr Chairman, tea and recesses have been a productive part of our meetings in the committee and in the General Assembly here. I have listened to friends and associates, and in my mind I have also come to see that this great Titanic ship is approaching an iceberg. Fortunately it is not night-time, we saw the iceberg from a distance. Numbers are being mentioned in the Assembly, some of them seem to be magic numbers. Others are not that fascinating. I would like to make a humble proposal, a compromise could be found maybe in increasing the number from six to ten, if that will be acceptable to the House. That is my humble contribution.

MR KATJIUONGUA: Thank you, Mr Chairman. I am sorry to say that after having made spectacular progress the last couple of weeks until yesterday, progress that gave us an opportunity to set the date of independence for Namibia, we have gone a long way, something that was really done in human history is the significant achievement by Namibians, I am afraid to say that at this stage we look like we are wasting time. I must say so frankly. You may differ with me but that is my right to say so.

I did say that once you begin to appoint additional people not elected you are opening a Pandora's box and this is exactly what is happening now. I just wonder - I must say

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so frankly - if you have a list of 72 people for the Assembly and these 72 people are not enough to appoint from all the ministers, and now it looks like not even for deputy ministers is the list good enough, then I think you are somehow saying there are people on the list who are wasting the space there, and I think you should say so and replace them with other people from whom you can appoint ministers and deputy ministers. That is fair enough, because I think in a sense it may sound - I am sorry to say so - like a declaration of no confidence in some of the people you have on the list who are not good enough to take these places.

I warned you and advised you not to appoint these people and that remains on record. Now you see how you solve your problem.

But I think we must make a clear distinction. My understanding is that what stands here in Article 37 was the consensus of the committee from the very first draft until we came to this one. So, therefore I cannot accept under any circumstances that there was a misunderstanding on that and therefore the issue of deputy ministers was never actually settled in the committee where it comes from. If this is a new request to reopen the debate on this particular issue, as we might have done with some of the articles, then I think we should clearly state so, but we should not mix it, because for me it will be a question of credibility on our part as to what we agreed upon and not agreed upon.

I don't think the lawyers have produced this paragraph just from habit, it must have passed many times through the committee and that is why it is here the way it stands here. So, as far as I am concerned, that is my position as I proposed yesterday when our DTA-colleagues and our Swapo-colleagues came with a two-thirds of simple majority. A two-thirds became a threat to some and a simple majority a problem for others, and that is why I felt to be neutral is to stick to what stands in the text, because that was more or less a product of bargaining over many hours. Therefore I feel the same thing should apply to this article.

I think we discussed in the committee the change of names, amalgamations of parties and all these things, and I think the Chairman ruled in the case of ACN that those are domestic problems if the party would like to shift or replace people on its list. But I think we are going to end up with no space for anybody in this House, squeezing, and I cannot be part of that. I want to make that very clear.

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MR KATJIUONGUA

Mr Chairman, in this connection a few words were thrown around about past crimes, criminals and things like that, in appointing them of course. I think we have to decide whether we are talking about reconciliation and be consistent about it and then there will be no room for double-talk. I think I mentioned this in my opening statement in this House on November 21st. I am also wondering when people are talking about past crimes or puppets and things like that, I think some people who might have been called puppets from this side, some are recruited to join the government of tomorrow. Are they also criminals? Did they also commit crimes? Are they forgiven and the others are still criminals?

Mr Chairman, I want to place again on record, as I did many times, I have also the ability to use abusive and irresponsible language, I can do so. So, when people do so, they should expect a flexible response from others as well. It is not a one-way traffic.

And one final point, Mr Chairman, if there is anybody in this House who thinks that Moses should be ashamed of his past record, you are dreaming and expecting the sun to come from the west. I accept that people make mistakes in their lives and there is no-one in this House who will claim a totally clean past record. Somehow in our lives we have made mistakes, things went wrong in the past and now we are in a new era to look forward and not to dig up the past, because it will take us nowhere. If we decide so, let us be consistent, but let us not try to be provocative at the same time. If people want to talk about the past, then we must open a debate and then, of course, the country will ask, "what the hell about reconciliation, what is happening?"

Therefore, Mr Chairman, I wanted to put that on record, because I think there are more important things, matters still outstanding. Here we have some proposals from NPP-435 about constitutional things which I think are important, maybe an oversight on our part. But I think the question of deputy ministers should be made to rest the way it stands in Article 37. Thank you.

CHAIRMAN: I thought the proposal was that Article 37 stays as it is. Then you go to Article 46(1)(b) and then you say not more than ten persons. That is all that has been proposed by honourable Kerina. Is that not the proposal he made?

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PROF KERINA: If the proposal is not acceptable for the House then I withdraw it.

CHAIRMAN: Are you withdrawing?

PROF KERINA: If it is not accepted, I am withdrawing it since it was not seconded.

CHAIRMAN: There is a proposal that Article 37 stays as it is and the number of appointed members is increased. That is in Article 46(1)(b). Is that accepted now?

MR RUPPEL: Mr Chairman, honourable Katjiuongua was talking about distinctions. Let us make some distinctions here to get the principles involved in this discussion very clear.

First of all, let us look at the function of the legislature. Primarily, I would think, it is to make laws. That is the work of the persons who have been elected to the National Assembly. Then let us look at the function of the executive, that is now the president and the people on the cabinet who advise him: they are there to run the country in terms of the laws made by the legislature. Where the two meet, that is called accountability and I think that is where the problem is with which we must deal. Clearly ministers and the executive should be accountable to the people elected in this country and who are ultimately responsible again to the people.

To secure this principle of accountability is by way of providing in the Constitution that the ministers will be accountable. One should not ask or require the whole executive to both run the country and at the same time participate in the legislative process all the time. You will weaken the legislature and load this House with impossible numbers, and at the same time you will weaken the executive by requiring them all the time to be in the legislature. So, in the end it seems to me in principle not a good arrangement to require in a constitution that the whole executive must be coming from the National Assembly. Other members feel differently about this and there was a compromise which, in principle, brought about the talk about an arbitrary number of people who would be appointed to the Assembly so that they could then be drawn to the Cabinet. This number is completely arbitrary. It was six for some reason. It could have been ten, it could have been twenty for that matter.

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MR RUPPEL

The test which I want to strongly propose, if that is the arrangement, should be to meet the practical requirements of the executive. There is no point in limiting that number to six if it is clear it is going to limit the function of the executive. If the executive perhaps - and there were good arguments in favour of it - requires more than six people from outside the Assembly proper, then it should be ten. They are not going to influence the voting pattern here anyway. The legislature, which is elected to make laws, will be the same number of people all the way. The only thing which seems to have been overcome in that case is that there will be six or ten or twelve people who will be required from time to time to come to the Assembly and account for how they have run the country in terms of the laws which were provided to them to run the country. I think this is the principle and we must have this clearly in our minds.

So, when we come to the compromise, let us be practical, let's accept the number ten as a new magical number if it is more practical, and I strongly feel that it is more practical to leave the executive with some more room to manoeuvre and to put together a good team to run this country. Thank you.

MR DE WET: Mr Chairman, I want to second the proposal that was moved by the honourable Mr Katjiuonqua. There is a saying that all wise men come from the east. I think we have those wise men now in South West Africa. They are not in the east anymore, they are here. Nobody can convince me that out of the 78 members in this House, there cannot come 32, 16 cabinet ministers and 16 deputies who don't have that experience and ability to run this country, to form the executive. I don't see the necessity for bringing in more people from outside. The provision has been made for the president to appoint six, and I think that was the idea behind the six, that they should come out of the public, people with the necessary expertise. That provision has been made and I think it is ample. I cannot agree with the honourable member Mr Angula that this is a minor issue. This is a major issue, this is a principle, and the principle, as far as I am concerned, is that members of the executive - and I regard the deputy ministers as part of the executive, not necessarily part of the cabinet, but of the executive as such - must in the first instance come out of parliament, nominated out of this House, because they have to be accountable to the House in the first instance and to the elec-

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MR DE WET

torate and the country in the second instance.

The deputy ministers are going to be appointed, as Article 37 reads, to exercise or perform on behalf of ministers any of the powers, functions and duties which may have been assigned to such ministers, and if the minister is accountable, his deputy is also going to be accountable, and therefore he must be part of parliament. If we allow the principle to be stretched and deputies be appointed from outside, where will we land up eventually? That would give the president the power to nominate all sixteen deputies from outside. Then we may end up with 94 people in this House, overcrowded. We already have 72 members to represent 1,4 million people and how can we be responsible and also accountable to the electorate, the tax-payer, what will the additional financial implications be in nominating more people from outside? We need this money for development, not for more people in the executive not being members of this House.

Sir, I think we must think about the consequences and what the electorate will say if we start loading the executive, the National Assembly and we end up with almost a hundred people in this House, because I cannot see how the deputy minister can exercise or perform his duties if he is not present in this House. If we discuss the budget they will all have to be here and they will have to be accountable, because they are running that specific department, the minister and his deputy. So, I think this is a matter of principle and I don't want to raise any more arguments here.

My request to the major party is, let's agree and leave it as it is, and if the future determines that it is necessary to bring more expertise in, you can either do it by consultations or then we can change the Constitution, but I think for the moment we must settle, I think that is the attitude of this House that we do not raise any new arguments or bring in any new amendments at this stage.

The request is that we agree and let this article stand as it is. Thank you.

CHAIRMAN: Article 37 on the deputies stays as it is. That is not what is now in dispute. Having agreed on that the proposal is being made on Article 46(1)(b). That is what we are debating now.

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MR BOTHA: I think the principle involved here surely is the limitation of the amount of people that the president can appoint. The principle is not the number of people but the fact that there is a limitation to the number of people the president can appoint. So, I don't see any problem with raising the number from six to ten. That is why I put up my hand, because I wanted to second the motion of honourable Kerina. I think we are a small country and we need the expertise that we can get. If it is possible for the president in his wisdom to make an appointment because of the expertise and skills of the person involved, I think that it would be very sad if you had to be limited by a mere number in the Constitution. We are not asking for sixteen or some ridiculously high number, we are just asking for this number to be ten instead of six.

So, if the proposal is still there for the number to be raised to ten, I would like to second that motion. If the motion has been withdrawn, I would like to propose that motion.

DR AFRICA: I think this matter under discussion, honourable House, is a fundamental change from the Constitution. It is not something easy as has been made out by some members here, and as such I think it is a question requiring renegotiation. I am a bit disappointed in the Chairman's ruling. He said yesterday that this morning we will come together to tie up loose ends, and from what I have been saying it is obvious that I don't regard this matter as a loose end. I think that those of us who were not in the committee, were misled by what is written in the Draft Constitution, if this thing is discussed in this manner.

Honourable Chairman, I would say that for each argument that has been raised here, one can obviously propose a counter argument. To me the question is nominated versus elected members. I refer to the 1982 Principles and support Mr Barnes that it is mentioned in these Principles that there should be an elected executive branch, whether we regard the deputy ministers as part of the cabinet or not.

A lot has been said about the need, why do we need people from outside. People have talked about the expertise, probably the know-how, the experience. Mr Chairman, I think this is a new nation being born, and I don't like the idea that a reflection is made on the honourable mem-

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bers of this House, that they will not be able to be deputy ministers. I think as a new nation we must give them the chance to gain that experience and gain that expertise.

The second argument in this respect is that it is important to be linked with parliament, because here is where the questions are going to be discussed and debated. For a deputy minister just to sit outside this House, not knowing the intricacies of decisions and the arguments being brought up here would be a disadvantage for him.

Mr Chairman, I am sorry that it has been mentioned here that the criterium for membership for the Constituent Assembly is different from the criterium to be a deputy minister. Then what was the criterium for the Constituent Assembly if it was not to draw people who could talk on behalf of the people outside? I would go so far as to say and to support honourable member Mr Katjiuongua, for saying those people here on whom this reflection is being made, unfortunately, are just wasting space.

Let us look at the comparison with the Constitution. Here we have people drawing up an excellent Constitution and they were not, in the modern idiom of the word, experts on constitutions, but we are all proud of the Constitution that has been prepared. We are all proud that this Constitution stands out like a jewel in a bleeding and Dark Africa continent. Why do we have to be afraid to nominate members from this august House to be deputy ministers? I know the argument is no longer whether it should come from this House, but whether there should be an increase in numbers.

It has been mentioned here that if the president hasn't got a majority in this House he can co-opt members from outside. That argument doesn't hold water, because if that is the case, then it will be a boost for reconciliation if the president looks at the other parties in this House to get deputy ministers. The question is one of control. If we agree to appoint ten people from outside, tomorrow we might come and say those ten are not enough, we must get more. This side of the House, the DTA, is only prepared to look at this provided it can be done under certain conditions and that will necessitate that we go back and discuss this, because we have in fact agreed that it should be six and not more than six.

I just want to point out that in other countries where this question of nomination versus election exists, that when they are nominated members they are drawn from all

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members of the House irrespective of the parties they belong to. In view of this I think this question has opened up a new avenue of arguments. I would support those members who said we should start with the six. I think the other side of the House was wrong in approaching the matter in the manner in which they did. If they start with the six - and I know a constitution cannot be changed easily - at least we can work out something. Thank you.

MRS ITHANA: Thank you, honourable Chairman, I would like to reflect on the magic number six. Originally these six nominees were proposed to have nothing to do with the cabinet whatsoever or the government. These were nominees for the legislature. When the question of accountability came in, that is when this issue was linked up, that we cannot have ministers nominated from outside parliament and they are not accountable to parliament. Therefore they must be from within the six. That is how the link came up. Six nominees from the legislature, final. And then when the accountability question was brought in, we agreed the six nominees must be members of the Assembly. That is the relationship between cabinet and legislature on the question of accountability.

Members of the committee also recall very well that the first draft by what we used to call the heavenly lawyers, this Article 36 in that draft, the version that is there is written in italic letters which to us in the committee meant that these are ideas from the lawyers, they were not originally our ideas. I think you agree with me on that.

Since we have made all these links up to there, we are saying the deputies also fall into the same category. I have a proposal to make. If the proposal by honourable Prof Kerina is not acceptable, then let's go back to Article 35(1) which says that deputies are not supposed to be members of the cabinet, and if deputies are members of the cabinet, then we make them accountable to parliament. In the same way they become members of both the cabinet and parliament. Now the number of six becomes so static, yet when we arrived at it we didn't even have any consideration of whether they represent a region or represent what, we just put six. Now we are opposed to ten. We are saying the people who are sitting here are only using up space for nothing. We are not talking about the present.

According to our decision the president in future is going to be elected by the people. Any gentleman or any lady

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MRS ITHANA

who may not even be a leader of a party may stand for election and can be elected. This man or woman can have only two members here. From where is he supposed to draw his cabinet and his deputies?

Honourable Chairman and the House, if we increase from six to ten, to me it does not mean anything other than just to take care of the interest of this country and its people. But since I have the floor I would like also to touch on an issue that was kind of thrown at some of us who responded.

I responded to the issue brought up by an honourable member and I said we shouldn't make decisions here to try to revenge because of the past. Let's look at issues in the light of what they are. There is nobody here who had an intention of throwing those words to another honourable member here. That is not the intention, but people do say that when you live in a house of glass, please don't throw stones. So we should avoid retaliation, the throwing of words. That is exactly what I wanted to say. I didn't mean to hurt anybody, but I responded to what was said. Thank you.

MR RUKORO: Mr Chairman, I think if my memory serves me well, when we were discussing this matter in the committee, namely the question of nominated members, most of the parties were opposed to this idea. If I am not wrong, the DTA was dead set against this idea, so was the NPF and, if I am not wrong, so was even Swapo. The other parties were indifferent to this whole question, I think I was the one who really put up a fight for this clause until it was adopted, and I think it was adopted by way of a compromise or a package deal which was predicated on three understandings. If I am not wrong, the first one was that the number should be limited and we agreed on six. Secondly, that the members concerned will have no voting right in this House, so that it should not affect the balance of forces in the House, and thirdly, that if the president wished to appoint people as ministers or deputy ministers who are not members of this House, then those people should be part of these six nominated members of parliament, they should not be in addition to these six. I think that was the understanding.

Now, it would appear to me that after extensive discussion to try to arrive at a different understanding; there are no prospects for that understanding, and I think the

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and I think the only way that we can get to a new formulation members from this side are making it clear, it is when we subject the rest of the Constitution to renegotiation. That I feel is totally unacceptable, we cannot concede to that, and therefore I would appeal to the members on this side of the House that really, let's stick to this bargain as it was struck in the committee, there is no other way out from what I have been seeing in this House. Even if we are going to vote here it might resolve this question temporarily by way of a simple majority, but when we come to adopt the Constitution as a whole, if these ladies and gentlemen are going to stick to their guns, this thing is going to delay our whole constitution drafting process.

So, I am really going to say, just like we did with the question of Article 127, we stick to the original position, because that was a package deal, and that is also true. On both questions we really negotiated and the end-result was some kind of understanding. I think the room for manoeuvre is extremely limited, and I would really urge my colleagues on this side of the House that we stick to the deal as it is, bearing in mind that the ability of the president to appoint people to these positions as deputies or ministers, in my limited understanding, is really not affected and you can kill a cat by different means. There are a hundred-and-one ways to kill a cat. Therefore I feel that it is simply a question of going back to the drawing-board and retaining the very same people that the president has already nominated in certain positions, but by resorting to different tactics and strategies without necessarily having to fight for an increase in the number of nominated members. Thank you.

MR HAMUTENYA: I listened very carefully to all the statements made. I only want to reflect on one or two points which were made.

One, that this House of 72 contains all that which is required in terms of brains to run this country and therefore to draw deputy ministers from here. Yes, it is maybe correct, but we were not confident enough that the House of 72 will be sufficient to provide all the brains that is required. We therefore proposed a second house. So, others saw the need for a second house. So, by the same logic that we found a need to add to the 72 by way of creating two houses, maybe the argument here is a contradiction, particularly if it comes from those who were pro-

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MR HAMUTENYA

ponents of the second house.

Having said that, I would also like to say it is correct what Comrade Tjiriange said. Drawing up a list for the party is not the same thing as looking at expertise. Somebody may be very popular in Kaokoland, but he doesn't necessarily know anything about a budget. But you want to win the election in that particular area and you put him on the party list. So you cannot say because he was there automatically he would qualify to be a minister. That is simply by way of argument, that is not my point.

Earlier on I raised a question: When we say they must be members of parliament, does that also include being members of the second house or is it only from the first house, because if the president is allowed to choose from both the first and the second house, then I think the argument of the increased number doesn't hold water. He will then have a wide latitude to look at both houses to find experts. The base of selection would have been broadened by then. So, that is why I try to link the two, Article 37 and 35.

If we define parliament as consisting of the two houses and we are saying that the president can indeed pick his cabinet also from the second house, then I will say let's leave things as they are. That is the understanding. By the same token we say now that since the second house will not come into being within the next two years, a provisional arrangement should be made that until that house is established, this particular clause could be flexible to the transitional arrangements. If we agree to leave the numbers there, we define quite clearly that when we are talking of the parliament we are talking of both houses, and then of course the article becomes only applicable when that house is on stream. So we make provisions for transitional arrangements. Then I think we solve the problem that way. Thank you.

CHAIRMAN: I think we have solved the problem. It stays as it is because parliament includes the two houses. Any other loose ends?

MR MUDGE: Mr Chairman, I want to raise the issue of amendments, and for that matter decisions taken during the two years until such time as we have established a National Council. Provision will have to be made as far as

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MR MUDGE

that is concerned. And then, before we get to that, maybe something which is much easier, I want to refer you to Article 132(2), (3) and (4).

In these paragraphs provision is made for laws in force at the date of independence. I want to recommend that at the end of the three paragraphs, (2), (3) and (4), the following sentence be inserted, namely that "all powers, duties and functions which so vested in the Government Service Commission" - that is the present one "shall vest in the Public Service Commission referred to in Article 11." In other words, that all the functions and powers and duties which are now vested in the Government Service Commission shall vest in the Public Service Commission once such a commission, of course, has been established.

Although I am not hundred percent sure about how it should be provided for in the law, I think it is necessary that some provision will have to be made.

Mr Chairman, to avoid a long argument I would also ask that the lawyers have a look at this. Maybe it was an omission and it might be in our interest to insert those words there.

MR ANGULA: Can the honourable member Mudge tell us what are the powers of the current Government Service Commission? Some of us don't know how it operates. What are these powers as distinct from the powers of the Civil Service Commission?

MR MUDGE: The same as proposed for the new Public Service Commission, namely an advisory function. They make recommendations to the government of the day as far as the civil service is concerned, namely the creation of departments, the structure of the government, the salary scales, all the conditions of employment, etc., etc. So, I am not proposing an amendment in any way, all I am saying is that it might be necessary to make provision that the powers which now vest in the Government Service Commission should be considered shall vest after independence in the new Public Service Commission.

What I am not hundred percent sure of - and this is why I want to refer it to the lawyers - is that in general we are here dealing with the period between the establishment or the date of independence and the establishment of the new commission. So, I think it is a legal problem that will have to be investigated and therefore I asked the Chairman to refer the matter to the lawyers just to have a look at it.

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DR TJIRIANGE: Mr Chairman, I am just adding a little bit to what honourable Mudge has said vis-a-vis the transitional period.

An attempt has been made on page 79 of the present draft to define what the parliament is which covers the period now and afterwards, but I still think it is not enough. Therefore I would have liked to ask the lawyers, somewhere here in this Constitution to expressly provide that during this period the National Assembly will have the right to adopt laws and also to provide for the functions of the National Assembly during this period when it comes to the amendment of the Constitution and so on. So, I think something will have to be done, because we will be functioning two years without the National Council. The National Assembly will have to be doing certain things in the absence of the National Council during that time, including adopting bills and so on. So, this has to be mentioned somewhere explicitly so that the National Assembly is not rendered toothless during those two years.

DR TJITENDERO: Mr Chairman, I have a problem here, I think we are loading the lawyers with things which are very obvious.

Article 132 states - and I think we had a discussion on it yesterday - that:

"Subject to the provisions of this Constitution, all laws which were in force immediately and before independence shall remain in force until repealed."

On top of that we also said that with the assignment given with regard to the assets, that laws that are likely to be repealed will be identified. I do not understand honourable Mr Mudge's concern on the inclusion of only one unit of an entire government structure, the Government Service Commission, unless it is established by very different laws that are not referred to here. But if we take it as part of all other laws, until repealed, will draw their legitimacy from this Constitution, then why do we have to single this one out? I would like to understand how it stands out so significantly and differently from all other commissions that we have to state it and isolate it here. Other than that I would have thought that it is covered. I do not agree that we single this out and give it to the lawyers, because obviously it will be covered when all these laws are being re-assessed. Thank you.

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MR MUDGE: It was brought to my notice, and all I am asking is that the lawyers have a look at it. I don't want to provoke an argument at this stage. I don't have any intentions or motives, it is just a matter which somebody brought to my notice and I thought, let us have a look at it just to make sure. I am not in a position to go into a detailed discussion on this subject now. Let us just find out what the position is there. There might be a problem.

MR VON WIETERHEIM: Mr Chairman, I was going to address the issue of the laws and the amendment of the Constitution in the interim period. As honourable member Tjirian-ge referred, I think it will be not a difficult situation to define parliament in this interim period, until we have a National Council, as consisting of the National Assembly and in that way being able to legislate as otherwise the parliaments do it.

In respect of the amendment of the Constitution, I think we can also make provision by giving parliament, in this case consisting only of the National Assembly, the power to amend the Constitution with a two-thirds majority of the total membership, and then say as and when the National Council comes into being, is constituted, that then the procedure will be followed as we have already agreed upon yesterday in Article 127, namely having two-thirds in the National Assembly, finding two-thirds in the National Council or otherwise having a national referendum with a two-thirds majority. Thank you.

MR MUDGE: Mr Chairman, is it understood correctly, and I just want to make sure of that - and I think I did understand the honourable member - that during the transitional phase decisions will be taken by this Assembly according to the procedure agreed, that the Constitution could be amended by a two-thirds majority of this House without the possibility of a referendum until such time as we have a second house where then provision is made for revision and the possibility of a referendum. This is the way I understood the honourable member as far as the amendment of the

CHAIRMAN: The lawyers are going to work on the document and redraft it and we suggested that the Assembly meets again on Tuesday morning, not to debate, but to look at the document before it goes to printing, because once it

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is printed it will be difficult. So we will meet Tuesday for one hour to look at the document again.

Then I have a proposal to make. I would like to propose an advisory editorial committee which I want to be composed as follows: Dr Tjiriange, Mr Ruppel, Mr Gurirab, Mr Mudge, Mr Staby, Mr Katjiuongua, Mr Garoëb, Prof Kerina and Mr Rukoro. Thereafter the document comes to the Assembly to look at it, not to reopen anything. On Wednesday it goes to the printers, printed beautifully, maybe in the Namibian colours and then adopted unanimously on Friday.

I have information that Pres De Klerk addressed the Assembly and announced that he has decided to unban ANC and other parties, even the Communist Party... APPLAUSE ... and also to release the prisoners. So this seems to be a very positive development and that is why I thought I should mention it to the House.

MR GURIRAB: Yesterday at your directions the House decided that we will have committees to look into the practical side of the transitional arrangements. One item that remains hanging in my mind is about the flag. There were some discussions and I rose to register my confusion. Where does that matter stand? Listening to the Chairman's directive we are not going to meet until Tuesday for a specific purpose. When will this Assembly have the opportunity to pronounce itself on this matter?

CHAIRMAN: We said yesterday that the committee will select the flag and then describe it in the Constitution, and then you are going to have a flag with the Constitution. But it was decided at committee-level this morning that the flag will be brought here, the one we have chosen, to be seen by the members and adopted. Do we have it here?

MR HAMUTENYA: We were waiting for the opportune moment to bring it in.

DR TJIRIANGE: I don't want to play on anybody's nerves or irritate anybody, but I still want to ask the question I asked yesterday. We will be the first people in history to have our flag before independence in the newspapers, what it looks like and so on. From my experience the flag is unveiled on that particular day. We have the right to depart from that practice, but it is a very awkward practice if we have seven weeks in anticipation of independence.

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ce and the flag is already in the newspapers and on TV. I have never seen such a thing. I don't know how we are going to solve that.

CHAIRMAN: The flag has to be reproduced and some people must see it.

While we are waiting I want to read properly that which I announced to you. At the opening of Parliament the State President announced that -

1. ANC-leader, Nelson Mandela, will be released within the next couple of days. He will be released unconditionally. A day has not yet been announced.
2. Thirty-three political parties who have either been banned or in exile or both are all unbanned, no conditions attached whatsoever: ANC, South African Communist Parties, all other parties highly critical of the regime.
3. Their leaders therefore can return without any fear. As pointed out, they will return without any conditions attached.
4. All restriction orders on the South African Press have been lifted.

The flag will now be displayed. APPLAUSE. There was a proposal by an honourable member that we should sing Nkosi Sikulele in honour of the flag.

We have adopted the flag formally.

ADJOURNMENT OF ASSEMBLY

On the motion of the Chairman, the Assembly adjourned at 12h00 until Tuesday, 6 February 1990 at 10h00.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
6 FEBRUARY 1990

The Assembly pursuant to the adjournment.

RESUMPTION OF DEBATE ON DRAFT CONSTITUTION

CHAIRMAN: As you will recall, when we adjourned we decided to set up a small committee to go and look at the amendments to see whether these amendments are in order and then to come and report today to the Assembly. I am informed that this committee had met, worked very hard throughout lunchtime and has just adjourned, and I am informed that honourable Mr Ruppel will make a small report.

MR RUPPEL: The committee appointed by the Assembly and mandated to consider the revised draft provided by the Assembly's legal experts reports as follows:

The latest draft was received, read and discussed by the Committee.

The Committee is satisfied that the amendments to the latest draft accurately reflected changes discussed and agreed on by the Assembly in relation to the Draft Constitution submitted to it by the Standing Committee on the 25th January 1990. The Draft will be made available to members of this honourable Assembly before Friday, 9th February 1990 when the Constitution will be submitted for adoption.

The adopted Constitution will thereafter be submitted to professional editors to submit the final Constitution in the correct form to the secretariat.

The adopted Constitution will then be signed by the members of this honourable House at an occasion, the date of which will be determined by the Chairman of this honourable House in consultation with the parties represented here.

Thank you.

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MR DE WET: Mr Chairman, with your permission I would like to ask the honourable member Mr Ruppel whether they have considered changing Article 125(2). If not so, I would like to move an amendment to be considered by the committee.

Article 125(2) - The Duties and Responsibilities of the Auditor General: As it reads the Auditor General shall audit the State Revenue Fund and shall report annually to the National Assembly thereon. If we leave it like that we are going to restrict the functions and duties of the Auditor General only to the Central Government, and at the moment the duties and responsibilities of the Auditor General stretch much wider. It includes the second tier authorities - they have not been dissolved yet - municipalities, control boards, village management boards, peri-urban development, and in the future it must also include the National Council and Regional Councils.

So, my request is that the committee consider the following amendment:

"The Auditor General shall perform his duties as laid down by law in so far as it is not inconsistent with this section."

MR RUPPEL: Mr Chairman, first of all, the new article is numbered 127. It is the equivalent of the old 125, apparently. It is not for the committee, in my view, to decide on any amendments at this stage, it is for this House. If there is a suggestion for an amendment it must be decided here and certainly not by the committee. The mandate of the committee was restricted to see whether the changes to the previous draft, which were discussed here and agreed here, were correctly reflected in the latest draft which we got from the experts. This we have done. An amendment to this particular section was not raised before, and it is therefore for this House to decide how this matter is going to be dealt with.

MR KOZONGUIZI: Mr Chairman, we are not quite clear what the amendment is, because the honourable De Wet explained why it should not be like this, but he didn't actually put forward what the amendment is.

MR DE WET: Mr Chairman, the amendment really embraces the

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idea that the duties and responsibilities of the Auditor General must be laid down by law, so that he can carry on auditing of other authorities than the Central Government and other boards than the Central Government. That is the idea. As it stands it reads:

"The Auditor General shall audit the State Revenue Fund and shall report annually to the National Assembly thereon."

MR MUDGE: Mr Chairman,

"The Auditor General shall audit the State Revenue Fund and shall perform all other functions allocated to him or her by the government or by law."

MR DE WET: I am satisfied, Mr Chairman.

CHAIRMAN: Honourable House, since there is no other business I would like to ask the indulgence of the House. This is unusual, but we have our good neighbours and when you get visits from your good neighbours, you have to introduce them, even to an honourable House like this.

So, I have the honour to introduce to you a visitor from Angola who is here with us, honourable Mr Mbinda Alfons van Dumen, member of the Politburo of the MPLA Workers Party and Foreign Affairs spokesman of the Party, and then with him we have honourable Ruth Neto, member of the Central Committee and the head of the Angolan Women's Organisation. APPLAUSE.

ADJOURNMENT OF ASSEMBLY

On the motion of the Chairman, the Assembly adjourned at until Friday, 9th February 1990 at 10h00.

CONSTITUENT ASSEMBLY

TINTENPALAST
WINDHOEK
9 FEBRUARY 1990

DR KAMEETA read the Prayers.

ADOPTION OF THE CONSTITUTION OF THE
REPUBLIC OF NAMIBIA

CHAIRMAN: Honourable members of the Constituent Assembly, Your Excellency, Advocate Louis Pienaar, Administrator General of Namibia, Your Excellency Mr Ahtisaari, Special Representative of the Secretary General of the United Nations, Your Excellencies, members of the Diplomatic Corps, distinguished guests, ladies and gentlemen:

This is indeed a historic day, the day on which we are gathered here to discuss and, hopefully, adopt the basic law for this nation. Your elected members have been working day and night like a good architect who is drawing the plan for a beautiful house. For a house to be lasting, well-built and liked by the owner, the foundation and the design must be carefully considered and the builders work properly supervised by the architect. Equally, to run a modern democratic state, a well-written constitution is a sine-quanon. This is what your Constituent Assembly has been doing for the last three months or so.

The foundation of a new Namibia has been laid with the completion of the Draft Fundamental Law. The framers recognised the inherent dignity, equal and inalienable rights of all members of the human family that is indispensable for freedom, justice and peace.

They further pointed out these rights to include the right of an individual to life, liberty and to the pursuit of happiness, regardless of race, colour, ethnic origin, sex or religion, creed, social or economic status.

The above-mentioned rights are most effectively maintained and protected in a democratic society where the government is responsible to freely elect representatives of the people, operating under a sovereign constitution and a free and independent judiciary.

The Constituent Assembly further pointed out that these rights have been for so long denied to the Namibian people by colonialism, racism and apartheid and that the people

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of this country have finally emerged victorious in their struggle against the said system.

We are, therefore, determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and protect the gains of our long struggle for national independence.

The architects of this Constitution were desirous to promote amongst all Namibians the dignity of the individual and the unity and integrity of the Namibian nation among and in association with other nations of the world. We will therefore strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state.

Committed to these principles, the framers of this Draft Constitution have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary state, securing to all our citizens justice, liberty, equality and fraternity.

Now therefore, we, the people of Namibia, accept and adopt this Constitution as the fundamental law of our sovereign and independent Republic.

Through consultations the question therefore is that we adopt this Constitution by consensus and thereafter the leaders will make their statements. Any objections? None.

AGREED TO.

APPLAUSE.

MR SAM NUJOMA: Mr Chairman, honourable members of the Constituent Assembly, His Excellency Adv Louis Pienaar, Administrator General of Namibia, His Excellency Mr Martti Ahtisaari, the Representative of the United Nations' Secretary General, Your Excellencies, members of the Diplomatic Corps, compatriots and countrymen, ladies and gentlemen.

The adoption here today of the Constitution for the Republic of Namibia is, indeed, a historic milestone and a giant step forward towards the completion of the Namibian people's long, bitter and bloody struggle for independence.

For the Namibian people the adoption of our country's in-

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dependence Constitution is one of the most important and memorable acts of self-determination.

Today, the masses of our people have a constitution which is a product of their sovereign will and which embodies their wishes and aspirations to be masters of their own destiny. Our people, therefore, have every reason to be jubilant and to rejoice at the fact that their democratically elected representatives in the Constituent Assembly have been able to write our country's fundamental law within such a very short time of three months. This is in itself a clear testimony that Namibia's elected leaders are profoundly aware of their responsibility to the people who have elected them.

The Constituent Assembly knows that the people of Namibia want to proceed immediately to independence. This is why it has been possible for us to work with a great sense of urgency to fulfil this important first task of the Assembly. In this regard, we have confounded all the doubting Thomases and prophets of doom who did not believe that we would be able to achieve this great feat that we are here to celebrate today, namely the adoption of a very good Constitution.

Mr Chairman, honourable members of the Assembly, your excellencies, ladies and gentlemen, this Constitution is not a perfect document, but for us in Swapo it is an impressive summation of the universally acclaimed principles, ideas and values of a democratic society. We can, indeed, state with confidence that all the pillars of a democratic political culture have been laid down in this Constitution.

The Constitution provides, among many important things, for the immediate establishment of a sovereign, democratic and unitary state. This supreme law of our land embodies, above all, a very comprehensive bill of fundamental rights to protect the individual from possible future abuse of power by organs of state. This should give all our people full confidence in the future of our nation that their present and future leaders will be governed in their actions by a constitution in which human rights are firmly entrenched.

Furthermore, the Constitution contains a section on affirmative action. This section gives the state the power to redress the social and economic injustices of the past. Thus, those who in the past have suffered from degradation and deprivation can now look forward to a better future where the goals of social justice, peace and pro-

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gress are embodied in the supreme law of the land.

In short, the Constitution, which we are here to adopt today, sums up our country's history, its current reality and charts the course for its future. While it is true that the Constitution is a product of the Namibian people's sovereign will, it has been enriched by the cumulative experience of mankind's continuous effort to create a truly humane and just social order. We have benefited from the experience of other countries in writing our Constitution.

Mr Chairman, I am confident that with the foundation for a harmonious and democratic political system now established in the Constitution, we are in a position to proceed to the final act of self-determination, namely, the proclamation of independence. We all should therefore gear ourselves to prepare for the big day in the coming days and weeks.

But as we proceed with joy towards that momentous stage in the development of our country, we must all strive to put the past behind us and to advance with determination in creating a single national identity out of several different ethnic units in this country.

In conclusion, I would like to express my sincere thanks and deep gratitude to all the minority parties in the Assembly for the political maturity and sense of patriotic responsibility which they have demonstrated over the last three months of deliberations on the Constitution. It has been a great beginning for our emerging democracy. This great beginning holds forth bright prospects for a happy and constructive working relationship among the parties in the future. In this regard I may venture to say that other countries who are presently involved in the process of reordering their societies might find some positive examples from our humble democratic beginning.

I would like to conclude my brief statement by saying to the Namibian people: forward with national reconciliation, unity, peace and progress.

Long live the Constitution of the Republic of Namibia. I thank you, Mr Chairman.

MR MUYONGO: Mr Chairman, Your Excellency the Administrator General, Your Excellency the Special Representative of

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the Secretary General, Your Excellencies, countrymen and honourable members of the Constituent Assembly.

Mr Chairman, it is indeed an honour for me to support the adoption of the final draft of the Constitution of the Republic of Namibia on behalf of the DTA. The draft that we have considered is a product of collective effort of elected representatives of the people of Namibia. It does not belong to any political party, Mr Chairman, but it will, without any doubt, reflect the beliefs, wishes and aspirations of the vast majority of our nation. Mr Chairman, allow me to repeat, the vast majority of our nation, because it is not humanly possible to satisfy everybody.

The DTA is satisfied that our future Constitution contains the principles, the guidelines and the safeguard that will make it one of the best in the world. First of all our Constitution adds another multi-party democracy to the few similar democracies in Africa. Democracy is now firmly established in Namibia. The DTA has, in its own way, contributed to the achievement of this goal and will jealously guard over and protect it in the years to come.

Our Constitution contains protection for the fundamental rights of every individual, fundamental rights which a future government will be obliged to respect in the process of law-making and government. Our Constitution, furthermore, makes provision for sufficient checks and balances to prevent any future government to abuse power. Our Constitution provides for the separation of powers. There will be an elected executive which will be responsible to an elected legislative branch and an independent judiciary.

Mr Chairman, I will be misleading our people if I do not make it known that the DTA would have preferred to elect and establish a National Council, Regional Councils and local authorities immediately. It is unfortunately necessary to first pass legislation to provide for such elections.

Our Constitution makes provision for a system of proportional representation which excludes the possibility of a "winner-takes-all" situation. Our Constitution, Mr Chairman, makes provision for affirmative action to redress the injustices of the past, and at the same time it protects the rights and property of those who might have been privileged in the past, because there can be no doubt that we need people with the means and experience to secure economic growth, which will be a prerequisite for improvement of the quality of life of our people.

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Our Constitution protects those who have been serving our country well. Existing appointments in the public service and the judiciary will not be placed in jeopardy, while opportunities will be created for those who are qualified for such positions. But it must be clear to all that the Constitution is not the end, but only the beginning. It provides for the birth of a new nation, it provides for the rules, the guidelines on which a future government must operate, that Namibia will in future be governed by elected leaders.

After the 21st March this country will be ruled by a new government. There will be a president, cabinet and a public service. The executive branch will be controlled by the majority party in this Assembly. On their shoulders will rest the responsibility to lead this country to peace, prosperity and nationhood.

Mr Chairman, allow me to say: May God forbid that they will fall for the temptation to pursue policies which will be popular in the short term, but disastrous in the long term.

So much harm was done in the past by parties and leaders who had unrealistic expectations. So much harm can be done by parties and leaders who might have unrealistic expectations again. Allow me also to add: May God also forbid that opposition parties will be negative and destructive. The DTA, I can assure you, will fulfil the role of constructive parliamentary opposition. We are elected by the people and as such we represent our supporters in the National Assembly and we will offer an alternative government who act as watchdogs over the interests of our country and our people, who will criticise wherever necessary, who will offer advice whenever it is needed, who will also be available for consultation. We will assist in upholding the Constitution, but we will never, never sacrifice our independence.

Mr Chairman, an elected minority is as much part of a democracy as a ruling party. I can hardly imagine a true democracy without an opposition. This is the role we in the DTA intend to play.

In conclusion, Mr Chairman, allow me to thank the members of the Standing Committee as a whole, and you Mr Chairman, for your able chairmanship, for the immense task that you have done. As the leader of the DTA in this Assembly I want to express - and I hope Mr Chairman will not mind if I become selfish for a minute - my gratitude to my four colleagues from the DTA, Mr Mudge, Mr Matjila, Mr Barnes

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and Mr Staby for the job they were able to do and the contribution they will be able to make in that standing committee. We were told that they made a contribution.

Mr Chairman, a special word of thanks should go to all the members of the Standing Committee. Allow me to say: "It is a job well-done." Let us all walk forward with our feet on the ground and faith in the Almighty God in order to guide us to a democratic, peaceful Namibia. I thank you.

MR J GAROEB: Mr Chairman, honourable members of the Constituent Assembly, Your Excellency Adv Louis Pienaar, Your Excellency Mr Ahtisaari, Your Excellencies members of the Diplomatic Corps, honourable Mayor of Windhoek, Dr May, other guests of honour, members of the press, ladies and gentlemen:

Today will go down in the history of Namibia as the most important day second only to 21 March 1990, the independence day. We have gathered here today before this historic building to witness a solemn occasion which is twofold:

Firstly, to endorse the completion of the single most important and difficult stage of the UN decolonisation plan for Namibia, and, secondly to adopt the Constitution for the independent Republic of Namibia.

Allow me, honourable Chairman, to congratulate you for your ability to steer this ship successfully to its destination despite stormy weather and a very rocky sea. I also wish to extend my thanks to the political parties and their leadership for the display of political good-will and statemanship which brought us at this watershed.

Mr Chairman, just some two months ago it was difficult to imagine this occasion becoming a reality so soon. Many pessimists, both inside and outside our country, were watching the clock to hear the announcement that the Namibian constitutional process has at last suffered the long-awaited and inevitable deadlock. Fortunately for the Namibians, reason and the logic of history prevailed and the UN Peace Plan has survived, of course not totally unscathed, its most trying stages, namely the return of political exiles, the election campaign, the elections and finally the drafting of the Constitution.

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However, the fact that we went through all these stages doesn't necessarily mean that we are content with every single aspect of each stage. There is not any doubt that we would not have allowed these stages to pass so incomplete as they did, had it not been for the fact that we fully realised the pressing need to end the suffering of our people at the earliest possible date. We felt these issues would be addressed at an opportune time in the future.

In my maiden speech I did mention some issues that still remain unresolved and which, if not resolved as provided for in the UNSCR 435, will leave an indelible scar on the face of the UN and, more importantly, become a formidable obstacle to reconciliation, peace and prosperity. We did submit to this august house to consider these problems before starting with the schedules work of the Assembly. It was our reasoning that that would have served as a confidence building measure. We raised two issues as needing consideration of the House. First was the detainee issue and the second the 1982 Principles.

I would like to take the two responses we got in reverse order. On the 1982 Principles there was an unanimous agreement, and we are indeed appreciative of this. With respect to the first, the House was muted. We interpret this to mean that it is unopportune to address the matter at this point in time. Indeed, there is considerable disquiet in sections of our society about the detainees. It is a matter that should be at the forefront of our minds.

The detainees have been failed tragically by the UN and the international community. They have not been able to exercise their democratic right to vote and share in this joyous occasion.

We feel that this is a national issue of great anxiety. It needs to be approached and addressed in a compassionate and sensitive manner. It is being demanded from us. We simply cannot afford to fail.

Mr Chairman, we are a large country with considerable resources and a small population. We must make freedom, unity and social justice a practical reality for our people. In international relations we have largely remained isolated due to South African machinations. Furthermore, we are entering the process of statehood. The UDF of Namibia would like to give an undertaking that it would support Namibia's rightful and legitimate member-

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ship of the UN. Similarly we would undertake to support membership to the OAU and accept our responsibilities to the full and make our modest and constructive contributions. We are also mindful of the similarities between our Constitution - the adoption of which necessitated this occasion - and the constitutions of numerous Commonwealth countries. We would therefore be disposed positively to possible membership of the Commonwealth.

Leadership, statemanship and public office are synonymous to political power and responsibility. The Constitution provides and is the check against derogation of such responsibility. We shall be constructive partners in this process of legislating. We shall remain truthful to the Constitution and bear true allegiance to it. I thank you, Mr Chairman.

MR DE WET: Mr Chairman, honourable members of the Assembly, His Excellency Adv Louis Pienaar, His Excellency Mr Martti Ahtisaari, honourable guests and fellow Namibian citizens. This is indeed a privilege to address this distinguished gathering on such a historic day.

The history of Namibia is a remarkable one. The dispute between the United Nations and South Africa over Namibia has been on the international agenda for more than fifty years. It started in 1946. The issues which were involved were legal and political.

During all these years it was difficult for all parties concerned to keep track of all the events, intrigues, negotiations and achievements. It was a prolonged process of struggle and political arguments. During March 1988 an agreement between South Africa and the United States was reached on a new initiative to open the way to independence of Namibia. Since then things developed with such leaps and bounds that we find ourselves today on the verge of independence and having adopted a Constitution with consensus a few minutes ago.

Heavy penalties and thousands million Rand have been paid by all the participants pursuing the independence of this country. We have reached that stage that everybody shall call the day to stop all the disputes and undertake to preach and practise reconciliation, with one common loyalty and goal, which shall be to build a new nation in a prosperous country, taking into account that a pluralistic democratic society demands a constitution which will en-

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trench the principles of equality, freedom, unity, democracy, justice and collectivity.

It has been an honour to participate in the preparation of this national Constitution, the most important event in the history of the new Namibia. We are satisfied that the deliberations took place in an atmosphere conducive to full embodiment of the principles of democracy, fundamental rights and the rule of law. It was drafted by the standing committee, discussed in the Assembly. Therefore it can be regarded as our own and suiting the aspirations of the majority.

This Constitution shall be responsive to the expectations of the Namibian people for generations to come.

During the drafting process Action Christian National (ACN), participated positively and constructively, but also stated our reservations. Although we can associate ourselves with the Constitution in general, there are a few reservations and I am going to mention some of them, but I am going to do this in a spirit of co-operation, reconciliation and in exercising my democratic right.

Preamble: We accept that the preamble should reflect the historical content of the birth of the new Republic of Namibia and the aspirations of its nation, but we do not accept that the preamble is the place where political views or disputable historic facts are reflected.

Secondly, culture - Article 19: Taking into consideration the virtues of our historic traditions, we firmly believe that lasting peace, stability, progress and prosperity will depend on the recognition of and respect for the rights of all, the prevailing traditional, cultural, linguistic and religious diversities of our society. Therefore it is our respectful submission that this article does not properly provide for the collective rights of cultural groups.

Thirdly, we are opposed to Article 23 linking apartheid and affirmative action. The impression is given that apartheid was the only factor responsible for the differences between those who have and those who possess less. According to our opinion affirmative action should be applied to the advancement of all the people to achieve a balanced society with equal opportunities where nobody is denied human dignity or being subjected to racism.

National Council: The envisaged lapse of time from the adoption of this Constitution until the establishment of

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the National Council is in our opinion too long, because to our minds a significant factor in creating and maintaining effective democracy is to provide for the means whereby each constituent element of government is enabled to check the use of power by all the other elements of power. The checks and balancing powers must be established as soon as possible.

But in saying all this I am also aware of the fact that it was a democratic process. That the people of our country and even the international world are waiting for independence. We also appreciate the fact that the people of this country cannot eat a constitution and cannot live on independence alone. The incoming government must be constituted with no delay so as to take office and perform their functions and duties.

Therefore, Mr Chairman, although we have our reservations on some of the clauses, we see our way open to adopt this Constitution with the rest of the Assembly by consensus and to associate ourselves with the constitution.

We regard consensus as being defined as acceptance in general and not unanimously on all the articles. We firmly believe that the continuation of the tradition of consensus, as reflected in the drafting of this Constitution, would greatly strengthen the first government in its task to govern and reconcile effectively.

Meneer die Voorsitter, vergun my 'n paar woorde in Afrikaans. Ek wil vir hierdie land die versekering gee dat die ondersteuners van ACN gaan in hierdie land bly, want ons beskou dit ook as ons land en mits ons die geleentheid gegee gaan word deur die regering van die dag, sal ons ook ons bydrae lewer op alle gebiede - die politieke, die ekonomiese, die administratiewe, die opvoedkundige en ook op die gebied van die handhawing van wet en orde. Hierdie land behoort aan ons almal, so ook hierdie aanvaarde Grondwet en ons stem saam dat aan hierdie Grondwet nie verander kan word nie en dit net alleen gedoen kan word ingevolge Artikel 127 waaroor ons baie lank geargumenteer het.

In conclusion, Mr Chairman, this Constitution must be the pride of every Namibian citizen. Therefore the ACN hereby solemnly affirms to be faithful to the Republic of Namibia and its people and solemnly promises to uphold the Constitution and the laws of the Republic of Namibia to the best of our ability. God bless our country.

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MR KATJIUONGUA: Mr Chairman, my colleagues in the Assembly, the Administrator General, the Special Representative, the Mayor of our capital, fellow Namibians.

Every Namibian must be proud of this great day. As far as I can recall, only the people of the Namib Desert - among the colonial peoples of Africa - were given the rare opportunity by history and the international community to write their own independence Constitution.

To write a Constitution of this nature in such a short time, from November 21, 1989, to February 9, 1990, exactly 80 days, is a phenomenal achievement by an African nation. It shows that the people of Namibia are no "small potatoes" but a nation to watch very carefully.

What is good of our Constitution is the fact that it protects everybody, including those who do not accept it in its entirety, including Mr de Wet, Mr Pretorius and Mr Sarel Becker of the HNP.

In the process of negotiating, bargaining and hammering out this Constitution the Namibians developed a special Namibian way of resolving internal differences and contradictions. The method is: In the national interest, remain level-headed, respect one another, be flexible and strive for the best for your country.

The enemies of yesterday and the bitter opponents of a few days ago in the election campaign all learned that there is nothing more permanent than the permanency of change itself: The world of reality is fluid and dynamic.

It is important that some of our neighbours who are involved in internal conflicts which appear insoluble carefully study the Namibian approach and adapt it to their own circumstances.

Africa and the international community must be happy at what is happening in Namibia today.

The African nations must feel greatly relieved and satisfied to have another proof that the victory of what is right is inevitable and that the African people are learning and becoming more mature with the passage of time.

Mr Ahtisaari, his colleagues and the international community they represent must be so happy - like a baby on Christmas Eve after having seen Father Christmas - to see themselves having piloted an exceptionally peaceful election campaign, measured by many African Third World and

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European, Asian and American standards, and to see the people they helped producing a Constitution which many see as a model Constitution in terms of the democratic values it upholds and the national consensus supporting it.

It is not unreasonable to assert that the developments in Namibia must have given an impetus to the current political happenings in South Africa, and that South Africa's co-operation in the implementation of Resolution 435 definitely provided a handy face-lift for South Africa internationally.

It is our sincere hope that an orderly transition to independence by Namibia and an all-inclusive approach to our problems and a genuine and fair application of democratic principles and a functional economy will provide the South Africans of all political colours and ethnic and racial backgrounds with an incentive to search for practical ways and means to solve their problems in their own national interest, the interest of Africa and the entire world.

As for you, Mr Chairman, my brother Hage Geingob, on the first day of this Assembly I wished you the best of luck and said that you carried a special and heavy responsibility and that you could not afford to become a disaster. Today after you, as the captain of the ship, brought the mission to its final destination successfully, I must say the following to you:

If you were an outsider who chaired this meeting, I would have given you an A, but because you were a chairman from a member party who withstood the temptations and provocations of a debate that affected you directly and personally, I must in all fairness and sincerity give a big A+.

If there is anybody in this Assembly who should know this Constitution in and out, it is you, Sir. I hope that the organisation of things will place you in a strategic location where you will be able to advise the incoming president of Namibia on what the Constitution says and the spirit in which it was negotiated. I trust, and I have no doubt, that you can become the Sam Erwin of Namibia, the US Senior Senator who headed the Select Committee on the Watergate Scandal.

As to our legal consultants, they have become an integral part of the founding fathers and mothers of this Constitution. To you, Gerhard Erasmus, a son of this country, to Dr Chaskalson, to Prof Wiechers, we cannot find words that could adequately express our gratitude for what you have done for us as members of the Standing Committee and for

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Namibia. Anyway, thank you very much.

You, my fellow members of the House, once upon a time Mwalimu Julius Kambarage Nyerere of Tanzania said: "It can be done, just play your part!" You have played your part courageously and it is now up to the people of Namibia to show themselves, Africa, and the rest of the world that we can also do it - and do it properly. And I cannot stop without expressing a word of thanks to our secretariat, to the men and women who helped us, who served us with tea and food at very awkward hours.

The people of Namibia must know from today that they have agreed on a contract - a contract concerning a community of values on how this country should be run from now on. This contract, this agreement, must not be abused or betrayed.

The NPF and I and the people we represent promise to respect this Constitution and to behave and to act within its confines, limits and parameters.

And lastly, to you, my brother, our incoming President, the burden on you is the heaviest of us all. You and your Administration must provide the best example how to defend and protect this Constitution and to promote the values, hopes and aspirations this Constitution stands for. The NPF and I promise to be helpful to you in playing our role as a member of a constructive opposition. Where you do well and where you need our help, you will express our admiration and support and where things go wrong we will stand in the frontline of those who will tell you not to do wrong things. We wish you the best of luck.

Mr Chairman, fellow Namibians, we are looking forward to the future with hope and optimism. This nation is on the verge of taking its own destiny into its own hands, when we will be solely responsible for our own failures and successes.

If the memorable 80 days of hard work are to serve as a future example to this nation, then they should tell us that hard work and co-operation is the only way to produce good results and to get this country moving. I thank you.

PROF KERINA: Mr Chairman and honourable members, distinguished of the Diplomatic Missions, the honourable Administrator General, His Excellency Mr Ahtisaari, Re-

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presentative of the Secretary General of the United Nations, the leader of Untag, Genl Prem Chand, members and staff of the United Nations, ladies and gentlemen.

The international climate, the concentration of global powers and the determinations that direct these concentrations impose certain restraints on our infant nation.

There is no doubt that Namibia is emerging as a new power centre in Southern Africa. The impending independence of our country has shifted the centres of future regional influence and policy determination as we prepare to address the critical issues of regional security, economics, monetary and environmental concerns. Naturally, the management of these concentrations would depend on the quality of our Constitution, government, leadership and president elect.

Mr Chairman, the sacred mandate of our Constitution is so powerful as to deeply inspire loyalty. It is also so demanding as to require special loyalty of all public servants in the exercise of public policy and administration. Our government, I have no doubt, will be bound to a multi-democratic constitution which speaks to, by and for the entire Republic of Namibia. A secure, stable and prosperous Namibia that is on the road to national reconstruction and development is the best guarantee that the interests of all free market orientated democratic governments in our region will continue to be secure.

Mr Chairman, maybe at this time let me say: The epigrammatic admonition by one of the American founding fathers, James Madison, is worth remembering at this point in time in our history: "If men were Angels, no government would be necessary."

The independence of Namibia due on March 21st 1990, has indeed raised new hopes and expectations for peace, security and reconciliation in our country. The reordering of our national priorities and the revolution of new economic policies for a free Namibia represent extraordinary challenges for our government and leadership.

May our Republic transform the Namibian spirit. Let it release the untapped energies of our human resources. Let it evolve new values and establish new goals for all Namibians. Let it inspire our people to look beyond the parochial confines of racism to the future of the land they love so much.

Mr Chairman, I am proud at this moment to be associated with the representatives of our respective parties in the

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Constitutional Committee and the Constituent Assembly, men and women of exceptional intelligence, lucidity and ability; leaders who possess exact mastery of technical details of extraordinary and bewildering range of constitutional issues and talents for concise and dispassionate exposition as well as a rich vocabulary in constitutionalism.

May I also seize this opportunity to congratulate my brother, our president elect, honourable Sam Nujoma, and say to my brother: May the precious Lord of all our deep and silent tears hold your hand as you assume the difficult office of the Namibian Presidency, and to ask you to always remember that good governments derived their just powers from the consent of the governed."

Long live the Constitution in which I had a precious moment of participating, in which I had moments of sharing with those from whom I have been estranged for such a long time. May I thank those who were part and parcel of my home-coming, my former colleagues of Swapo, the president elect, my brothers and sisters in NPF, NNF, our brothers and sisters of ACN who have overcome the past to represent their people in this august body today and last, but not least, let me say I have taken off my hat to one I didn't know so much, but my people knew him and that is to Mr Dirk Mudge and to his associates. They have made an excellent contribution, they have overcome the past, they have not been ashamed of what they have been involved in to be midwives to the birth of this precious nation of Namibia of which we are all the doctors, the nurses and the midwives. Thank you very much.

ADV RUKORO: Mr Chairman, honourable members, distinguished guests, some of us might be relatively too young to fully appreciate the significance of what we have just accomplished. What has happened today is the culmination of a century-long struggle for human dignity and, above all, the return of the land to its rightful owners. We are young in the sense that we were not there when our forefathers launched the war of resistance against German colonialism and barbarism at the turn of this century. Ever since then the black people of this country have not known peace or happiness; they have become third-class citizens and refugees in their own country. Ever since then the black people have been subjected to untold misery and suffering. They suffered costly defeats at the hands of our enemies, but they fought back gallantly despite and in spite of the superior firepower of the imperialists.

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Mr Chairman, honourable members and comrades, with the formation of Swanu in 1959 and Swapo in 1960, the task of continuing and directing the liberation struggle of the people of Namibia was passed to a new generation of Namibians, tempered in the flames of the battle against Afrikaner racist and colonial domination and imbued with the spirit of national unity in the struggle for national independence. As successors to the heroes of the great patriotic war against German imperialism, the likes of Hosea Kutako, Sam Nujoma, Hitjeve Veii, Toivo ya Toivo and many others some three decades ago, did neither shrink from their responsibility, nor fail the revolutionary expectations of the oppressed people of our country. History has proved that they did have the will-power to carry out their revolutionary task and the determination to find the necessary means to pursue and advance the sacred goal of national liberation. So, as we are gathered here today to proudly celebrate an important milestone in the history of our struggle for national liberation, we cannot forget to acknowledge and to praise our dead and living heroes and legends.

Let me now turn to the kind of future that we have attempted, through this Constitution, to secure for ourselves and our future generations. We in the NNF are deeply honoured to have been active participants in this historic process that easily equals - and in some cases even surpasses - the historic national convention that met in Philadelphia, Pennsylvania in 1787. Why? Because, unlike the Americans of 1787, the Namibians who were gathered in the Tintenpalast in 1989 comprise blacks and whites as well as women! That is an achievement of which we can justifiably be proud.

Our Constitution guarantees a multi-party democracy in that the right to form and join political parties is non-derogable and cannot be suspended even in the event of a national emergency. The principles of bicameralism, separation of powers, checks and balances, the rule of law and, above all, the supremacy of the Constitution and the independence of the judiciary are all firmly guaranteed by our Constitution. As a human rights lawyer by training I take particular pride in having been instrumental in the abolition of the death sentence in this country and in ridding our country and people of the scourge of detention without trial which has caused so much anguish to countless Namibians.

The Constitution also guarantees the right of workers to withhold their labour without being exposed to criminal penalties. It also entrenches the principle of equality

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between the sexes and goes even further by mandating Parliament to embark upon affirmative action programmes for the benefit of the women of Namibia, in acknowledgement of the special discrimination they have suffered historically.

Furthermore, the Standing Committee reached a historic agreement based on consensus, on principles of state policy which represent a minimum national and all-party consensus on certain basic and fundamental policy objectives aimed, inter alia, at the promotion of the welfare of the people irrespective of the ideological complexion of the party or parties in power. That, in itself, is yet another milestone and serves to cement the foundations upon which the broader policy of national reconciliation, tolerance and national harmony can be lived out.

Comrade Chairman, honourable members, ours is by no means a perfect document, but we cannot deny that it is a most unique document with incredible depth. It is modelled on the peculiar realities and experiences of our own people - both black and white, rich and poor. For that reason, as well as for the reason that Namibia is the one African (and perhaps Third World) country with a more than 40% strong quality opposition, I am optimistic that our experiment in democratic government is going to pass the test of time.

I would like to take this opportunity to thank all my colleagues in the Standing Committee, and in this honourable Assembly, for the dedication which they have shown towards the task allotted to us, namely, the drafting of a Constitution for an independent Namibia. I appreciate the spirit of comradeship which has inspired all our deliberations. I value all those contributions which reflect our commitment to the building of a single, powerful and prosperous Namibian nation. I feel confident that if we can carry on in this atmosphere of co-operation and of harmonious give-and-take, we shall set the correct tone for effective government in our initial years of independence.

I have been singularly impressed by the willingness shown by honourable members from all sides of this Assembly to make those compromises which have been necessary in order to reach consensus on those parts of the Constitution where we had significant differences in the past. I trust that the nation at large do recognise that we needed to make such compromises in the national interest and that by so doing we managed to draw up a Constitution which will find wide, general acceptance and which will endure for generations to come.

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We in the NNF believe that, despite the relatively short period of time allotted to them for comments and recommendations, our people will regard this Constitution as their very own basic law. For us a Constitution is not only a document which describes the manner in which a country is to be governed, and which is then kept in the state archives. For a Constitution to be a part of the nation it must also be inscribed in the heart of every Namibia, it must progressively become part and parcel of our political culture. Only if we can succeed in doing this would it be our best guarantee of stability and democracy in the future.

In conclusion, Mr Chairman, honourable members and comrades, let there be no doubt that through this Constitution we are about to launch a model African State, a State through which we shall help create a new Africa. An Africa free of colonial and imperialist domination, an Africa proud of its heritage and conscious of its destiny. Let our Constitution be the gateway to that forward-looking Africa, an Africa in charge of its affairs, an Africa in which the top priority on its political agenda is the socio-economic development of all its peoples.

Further, through this Constitution we have attempted to pay tribute to all Namibians who have participated in our struggle for liberation. In particular, we have attempted to honour the memory of all Namibians who have paid with their lives, in order that we today are accorded the singular honour of acting as the founding fathers and mothers of the new nation emerging out of colonialism. It is now up to us to demonstrate by our actions that their sacrifices were not in vain, by ensuring that future generations will never ever have to struggle once again against a new form of oppression. We have also, through this Constitution, attempted to pay tribute to the international solidarity extended to our liberation movements throughout the years, and which have enabled us to prosecute the struggle for national liberation to its logical conclusion.

Honourable Comrade Chairman, let us as future lawmakers not fail our people and country. Let us, together, accomplish what was started by our forefathers way back in the 19th century. Let us, together, walk that final round of our revolutionary struggle. "Patji Ngarikotoke!" It's about time, let's get back our land. Thank you.

CHAIRMAN: We have now come to the end of this solemn

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occasion and there being no other business, it is now incumbent upon me to thank all the members of the Assembly for the kind co-operation I received throughout and particularly to thank those members of the Standing Committee with whom I had to work long hours, with whom I had to quarrel, but they still like me, some of them still say good things about me, and to say it was a job well-done. It is a great honour and I am very proud of the achievement of today.

But there were many other people, the invisibles, who have been contributing, who have been working for long hours. I refer to the secretariat, especially my two colleagues who are sitting with me, and many others who have been supplying tea and transport, and also yesterday I came to know new people who were told to erect and work on this outdoors ceremony. I left them yesterday night about 9.30 and they were still here. So, I want to thank them for their commitment, for their dedication to duty.

I would like to thank the orchestra for their good music and also others, the AG's office, the support from the civil service. It was indeed not an easy task, but as many speakers have said, Namibians stood up and proved to the world that they are worthy of being reckoned with.

Honourable members, there being no other business, the next meeting of the Constituent Assembly shall be held on the eve of independence, namely the 20th March 1990, for the sole purpose of electing the next president.

ASSEMBLY ADJOURNED

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
16 FEBRUARY 1990

THE CHAIRMAN took the Chair and read Prayers.

ELECTION OF PRESIDENT-ELECT OF THE
REPUBLIC OF NAMIBIA

CHAIRMAN: Honourable members, I sincerely apologise to you all for having had to call you on such short notice. When we adjourned the Assembly on the 9th February, we decided to convene the next meeting on the 20th March 1990 with the sole purpose of electing the President, who would have taken oath and assumed office on the 21st March at one minute past midnight.

However, we ran into problems of protocol in regard to the invitations for the independence celebrations to be extended to heads of state who, we are advised by experts on protocol, would not accept to come and grace us with their presence unless such invitations came from a person comparable in status to a head of state.

We have been advised further that electing a president who will, in the nature of things, only act as president-elect until duly sworn in, will solve the problem. This meeting has therefore been convened to deal with that problem. We are compelled by circumstances to elect a president earlier than was originally contemplated. This president, as I am at pains to emphasise, will be known as president-elect and will only assume office after he has been duly sworn in on the 21st March with the lowering of the South African Flag and the hoisting of the Flag of the Republic of Namibia.

As the sole purpose of this meeting is to elect a president known as president-elect, I will now invite nominations for the same. Paragraph 2 of Schedule 7 of the Constitution, providing that the proceedings at which the nominations for the position as president shall be made be conducted by the UN Secretary General is hereby deleted. I now ask for nominations.

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MRS ITHANA: Honourable Comrade Chairman, honourable members of the Constituent Assembly. The process of nation-making that has started since this august body was formally constituted is continuing. Just a few days ago, honourable Chairman, this honourable House accomplished within the shortest possible time some of its most important tasks, that of the unanimous adoption of our National Flag, and most importantly, the adoption of our Constitution.

Today we are here once again to accomplish yet another task, that of electing the first head of state of Namibia.

Honourable Chairman, together in this honourable House we have crossed many obstacles, together we have shown to our people and to the international community that for unity, for reconciliation and for peace we can work together. At this point in time when Namibia is being born out of the ruins of apartheid, the debris of the war, the mistrust and dissent, we need a father or a mother above us all to foster the spirit of unity, to help heal the wounds inflicted upon us by the war, to inspire us all and to lead us into independence.

Hence, Mr Chairman, we yearn and look around for a man, a woman with the following qualities: A dedicated, courageous Namibian who will uphold and defend our newly born independence; a committed Namibian patriot, a person with an experienced record of leadership, a revolutionary and a good organiser, a person with a clean record of steadfastness at all times, and most important, a person with exemplary high moral integrity and courage. It is therefore so special to me as a woman and a mother to ensure that the future of my nation and my children is entrusted into caring hands and I therefore have a singular honour, Mr Chairman and honourable members of the Constituent Assembly, to nominate honourable Comrade Sam Nujoma to the candidacy of President of Namibia and seek the support of this honourable House to unanimously endorse my nomination. I thank you, Mr Chairman.

AN HONOURABLE MEMBER: I second.

CHAIRMAN: Any other nominations? None. I therefore take it that this House unanimously elects honourable Mr Sam Nujoma as the First President of the Republic of Namibia. APPLAUSE.

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Honourable President-elect of Namibia, you can see from this unanimous election that the Namibian people are bestowing trust in you and I am sure you wouldn't betray that trust.

THE PRESIDENT-ELECT: Thank you very much, honourable Chairman, honourable members of the Constituent Assembly, and before I go into details of what I wanted to say I would like to recognise the presence in this House of a distinguished freedom fighter from the United States of America, brother Rev Jesse Jackson who supported our struggle with other American citizens. APPLAUSE.

Mr Chairman, on behalf of the Namibian people and on my own behalf I would like to sincerely and in heartfelt gratitude express my thanks and appreciation for the trust and the confidence you honourable members of this House bestowed on me. I will try my utmost best to uphold the Constitution of the Republic of Namibia. I will honour the trust you have placed in me, I will execute my duties in conformity with the letter and spirit of the Constitution, the policy of national reconciliation, unity, peace and stability in our motherland, Namibia. I will do everything in my power to always consult my colleagues in the Cabinet, in the Parliament and also other leaders from other parties on matters of great national importance.

Mr Chairman, I would like to once again thank you for the excellent services you have rendered during the course of the constitution debate up to this date. I must say to all of you, a job well done, and finally once again I would like to thank you very much for having elected me as the first President of the Republic of Namibia. Thank you. APPLAUSE.

MR MUYONGO: Mr Chairman, honourable guest, Rev Jesse Jackson, honourable members of the House, allow me to wish my colleague, Mr Sam Nujoma, all the best of luck. Let me say to him that this election that has just now taken place, is taking place in the spirit of national reconciliation, in the spirit of Namibia.

I say to people that as Namibians we might differ outside, but when we get into the House, when we do our thing, we agree, because we have one thing in common and that is

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Namibia. So, I say to my colleague, Mr Sam Nujoma, you spent your years - sometimes I should say your handsome years - in the struggle. At long last the Almighty God has brought you back and he has given you what you have suffered for all these years. So, once again I want to wish you all the luck.

On the part of the DTA, Mr President-elect, I can only tell you one thing: We will give you the co-operation that you need. If we are consulted we are prepared to co-operate. We might give you some constructive criticism and I hope you will not mind, because that is democracy and it doesn't mean that when we criticise you we are going to turn into your enemies. In actual fact, we will even be your brothers.

So, Mr Chairman, I want to say to the people of Namibia and the House here, at long last we are almost there, we are almost getting to the end of the colonial era. I don't know how many days are left, I can't wait to live the rest of the days, because I thought everything was going to be brought forward. Mr Chairman, I am not saying that we should do that.

It is really a very important moment for us. At long last at least the people of Namibia will be able to put their trust in the hands of their own sons and daughters, and in this case, for the first time this country is going to entrust this very heavy task.

I remember one vice-president of a given country, when that president was away and when he came back he said: "Next time you leave I don't want to take over your job, because it is like being in prison." I am not saying that you are going to be in prison, Mr President-elect. All I am saying, it is not an easy job, but knowing you, having worked with you, having known you for some time, I am sure you will be able to live above all the bad expectations, but good expectations. Thank you.

MR J GAROEB: Honourable Mr Chairman, honourable members of the House, honourable visitor, Rev Jesse Jackson and his wife, allow me first of all on behalf of the United Democratic Front of Namibia to congratulate the honourable member, Comrade Sam Nujoma, for his appointment as the first head of state of the new Namibia.

Comrade President-elect, we came a long way to this his-

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toric moment and we still have a long way to go. In my inaugural speech I said the following and I quote with slight changes:

"It stands to reason that success of this new government will primarily depend, firstly, on your willingness to recognise and accommodate the diverse views expressed on the future development of Namibia; secondly, the degree to which we are jointly committed to the Namibian people in favour of pluralistic democracy, and thirdly, your ability to weather the storms and to maintain in the new government at all times a climate conducive to a friendly, open and constructive exchange of views, the only means through which we can address issues exhaustively and honestly."

Comrade President-elect, God bless you. Forward with national reconciliation, unity, peace and progress.

In conclusion, honourable House, I would like to pay tribute to a brave son of the world, Comrade Rev Jesse Jackson who came all the way to share this very joyous moment with the Namibian people. God bless you.

MR PRETORIUS: Honourable Mr Chairman, on behalf of Action Christian National I also want to extend our congratulations to our President-elect, honourable member Mr Sam Nujoma. I want to congratulate him with his unanimous election, but I will also remind him in future that that was also due to the fact that I decided to withdraw my nomination at the last minute. LAUGHTER.

Mr Chairman, we want to promise the honourable new President-elect our co-operation in all matters of mutual interest, but I think at this stage the honourable President-elect will already know that co-operation, as far as ACN is concerned, does not always mean agreement, but when we say co-operation we mean it. We trust that the honourable member will receive the necessary wisdom and mercy to guide us through the very difficult times ahead, and we will believe that the honourable President will contribute to create the necessary room for everyone of us.

So, to the honourable President-elect I want to say, may God bless you, our country and all its inhabitants. Thank you.

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MR KATJIUONGUA: Thank you, Mr Chairman, colleagues in the House. I suppose that our brother and sister, Rev Jackson and our soul-sister feel very much welcome to their roots back here in Namibia. You are very much welcome home, as he said last night.

Friends, I won't say much today, I think I have said many things in this House since we started here. Today on this very special day in the life of this nation, in the short life of our Assembly I only want to say three things:

We wrote a Constitution in 80 days. The other days we adopted a Constitution by national consensus and today we have elected the first President of the Republic of a free Namibia unanimously. I hope the world is looking at what is happening here in Namibia. I hope South Africa is looking at what is happening here in this country. I hope what we are doing here will help things down there. We are creating a tradition, a political culture that is perhaps unique on our African continent, and perhaps in the rest of the Third World.

At a time like this I would like our people, the supporters of the NPF and other Namibians, to learn to respect our Constitution and the institutions we establish in terms of that Constitution, and therefore our first act, the Office of the Presidency of Namibia. Irrespective of who is in that office, it is the national symbol and in this particular case I sincerely hope that our people of all political persuasions, of all colours, if I may say so, will wish our brother, Mr Nujoma, the best of luck and wish him and his administration a good future for our country.

The success of our country as a new nation will depend on a further-going programme of national reconciliation. You can't have it halfway, it must go all the way, the upholding of democratic principles and values and an economy that works, that puts people to work, and you, my dear brother, President-elect, I don't know what you feel in your heart right now and your family and your wife, but all I can say from the bottom of my heart and the people that I represent, we would like to wish you everything that you deep down in your heart would like to wish yourself. Thank you.

PROF KERINA: Mr Chairman, members of the Constituent Assembly, the representative of the United Nations Secre-

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tary General, Mr Ahtisaari, our distinguished and special guest, the Rev Jesse Jackson and our sister, Mrs Jackson, who have never been second to us in their dedication to the liberation of Africa, and particularly who were always there when we were hungry, when we were running around as refugees from the sixties to this day. I feel a special affinity to Rev and Mrs Jackson because of my upbringing in that great country of the United States of America, and I hope when they leave from here they will consider themselves as honorary goodwill ambassadors of the people of Namibia and our government in America.

Mr Chairman, there is no dictionary in the world today, be it the Webster Dictionary or the Oxford Dictionary, that contains the terminology that can best express the depth of our excitement, the depth of our emotionalism, the depth of our psychological movement within our bodies and within our country that I can use to reflect this moment in the history of our country. I can only at this moment turn back to the Old Book of the Bible and the Prophets and say I now understand what the prophets meant when they stood on the top of mountains and saw a promised land that some did not have the blessings to even walk into. This particular moment is a special moment to me in particular, because it is a moment that has brought your sons who have been out there and daughters who have been out there, and certainly, Comrade Nujoma, our President-elect, and honourable member of this Assembly was there when he was needed, honourable member of the House, Adv Kozonguizi was there when history needed him to be there with us. I cannot fully express the depth of my emotions at this special occasion when I look at the picture in our presence here of a dedicated son of our country whose life has been deprived of over twenty years for the cause of our country and that is the honourable member Herman Adimba Ja Toiva who is also a pillar of this august body.

I would go along, probably, and mention the names of those who were gone before us, who had died for this country, who shed their blood for this country with a smile so that a new Namibia can be born. They too deserve our respect and our honour at this particular day as we enter the new promised land of Namibia.

Without wasting time, Mr Chairman, on behalf of the FCN I would like to take this special occasion and extend our party's and membership's deep appreciation, respect and honour to a great son of Namibia, our President, Mr Sam Nujoma. He has been there, he has been criticised, I crucified him a hundred-and-one times, and he only looked around with the same little smile that he always ex-

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presses, sometimes expressing anger, but sometimes, if you penetrate through those sealed lips, to see the whiteness of his teeth, you can understand that the message has been received and taken serious note of, but never with a spirit of revenge and always with graciousness.

I am honoured at this particular time to say to my brother, Sam Nujoma, trust me, I shall be there now that the other second part of the struggle has just begun. You have done your best with the team that was next to you, and that is next to you here. I hope you will consider us as part of that team, because of the great edifice of the Titanic of the Namibian nation has to come in port in Walvis Bay on the 21st March.

My brother, Sam Nujoma, brothers and sisters of Swapo and all our brothers and sisters of the DTA, of the ACN, of the NPF and of the NNF, I would like to say: A job well-done, and may God bless us all and especially you, Mr President.

ADV RUKORO: Honourable Comrade Chairman, honourable members and comrades, distinguished guests. Allow me to extend my, as well as my party's, warm and revolutionary congratulations to Comrade Sam Nujoma. Until a few moments ago he was merely the president of one of Namibia's multiple political parties, but after today, and certainly in a few weeks' time, the honourable member will become the president of every soul within the independent and sovereign Republic of Namibia. Let the courage, determination and single-mindedness that characterised your leadership of the national liberation struggle for close to thirty years, be transformed into wise, decisive, fair and, above all, statemanlike leadership in the 1990's.

Finally, Comrade President-elect, I wish you success and best of luck in the execution of the formidable and onerous task of your high office. I wish you good health and godspeed. Aluta discontinua. LAUGHTER.

CHAIRMAN: I thank honourable Adv Rukoro for reminding us that the struggle is over.

Honourable members of the Constituent Assembly, we have in our midst today an illustrious African son from the

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diaspora, a freedom fighter, a crusader in the civil rights field, a preacher and a politician who has twice ran for president in America. I hope next time he will succeed. I would now like to invite him to come and sit next to me and to meet the House.

Rev Jesse Jackson, it is now my distinct pleasure to introduce to you formally the leaders of our country who have been very instrumental in the making of history. You have already met the President-elect, you know him, and I would therefore like to formally introduce the leader of the DTA, honourable Muschek Muyongo, leader of the UDF, honourable Chief Justus Garoëb, honourable Mr Pretorius of ACN, the leader of NPF, Mr Moses Katjiuongua, the leader of FCN, Mr Mberumba Kerina and Adv Rukoro, leader of NNF. As you can see Rev Jackson, we have more democracy here than in the States where you only have two parties. These are the people who acted as the architects for a very liberal Namibian Constitution which guarantees a functional democracy, a multi-party system, a mixed economy bordering on a free market system and above all, the supremacy and sacrosanctity of the rule of law. This makes Namibia unique in the region and, indeed, in the whole of Africa.

As we are about to emerge from the throws of colonialism to enter nationhood, we are quite perturbed by the poultry aid so far pledged by your government, aid that we so badly need if we are to give our country a new and promising beginning. We ask you, therefore, as a crusader and a lover of freedom and justice, to help us in persuading the American Government to give us more than they are at the present prepared to give.

Rev Jesse Jackson, welcome to Namibia and may God bless you. I would like to give you the floor now to greet the Namibian people.

REV JESSE JACKSON: Mr Chairman, Mr President-elect, members of this distinguished body. I thank God for this privilege - it's beyond measure and beyond any plans of my own - to be with you on this occasion. I did not come today as a tourist, but as a member of the family. I am honoured beyond measure to greet you today on behalf of three million African Americans torn from these shores and stranded in Nebraska, the Americans who support your cause and supported your quest for independence, self-determination and democracy. I just wish that Dr Dubois and Nkrumah and Dr Kane could be here with us today. You are

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leading a new world order.

Mr President, we met more than 25 years ago and we prayed together and we have cried together, we have been threatened together, we have been lonesome together. We sat on the banks of the Hudson River in New York, and the Nile River in Egypt and the Seine in France. Around the world, even in your lonesome hours you kept your faith and God has rewarded you with this tremendous responsibility to lead a nation to higher heights. To brother Ben Gurirab, who specialised in cheap hamburgers and fried chicken trying to survive, to brother Toiva who represents to all of us the embodiment of courage and a suffering servant, we thank God for your presence and for your leadership and for your example.

Namibia is a great and resourceful country, the Namibians' brightest days are here. Strange that you have been healed by your strikes, honour and suffering is redeemed, suffering breeds character and character breeds faith, and in the end faith will prevail. Your victory keeps the flame of hope burning for oppressed people around the world. Your commitment to a free and fair democracy beyond racism, sexism and war, your commitment to relieve the plights and the pain of blacks is a help in creating a new and fair South Africa. Here we see lions and lambs lying together finding common ground, and thus peace in the valley. You have suffered much, you have bled profusely, you died young, you have been jailed without cause, you have been exiled and yet the miracle is - at least as great as the parting of the Red Sea - that through all of this you are not bitter, but you are better. Your suffering burnt away the alloy and now the metal remains, the true grit, courage, non-racial honest democracy. You have guided Namibia to its finest hour.

Unimpressed with the multi-party formation, the people were civilised enough to agree to agree and agree to disagree, and yet above all protect God and country.

In Europe the winds of change are blowing, fences are being snapped, walls are falling down, but through all of that change, the position of the West was to keep a strong pressure role, to keep a strong Nato, (a) as a deterrent from communist expansion, (b) as stimulus for democratic reform, and when that democratic reform takes place, aid, trade and markets. Thus we find in Poland, Romania and Eastern European countries the beginning of a second marshal plan. Tens, yes hundreds of millions of dollars for loans and aid and trade and markets. As a matter of fact, the key to the first marshal plan was a 25 year

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commitment, 50 year loans at 2%, government secured. Some European countries have 20 years more to go on 50 year loans at 2%, government secured and in the market at 9,8%.

I appeal to my nation to take a new look at the Southern Africa policy. To give the Eastern European countries a new start is the right thing to do, but to give 12 million to a new Namibia and fifty plus million to Savimbi to destabilise Angola is beneath the dignity of our country. Just as Mr De Klerk now looks at the early mornings of a new South African policy and try to see beyond apartheid, our government must look at the new Southern Africa and not just aid, but rebuild and protect, more trade, less aid, with effective security. Southern Africa deserves a marshal plan. You have given the world too much good labour cheap, too much precious and rare raw materials, too much blood and war, you have earned the right to have a marshal plan for this region. APPLAUSE.

I have just left South Africa. I left with a great sense of hope and a sense of caution. Hope because Mr De Klerk has unbanned some political detainees, slightly more than 5%. I pray that more will be released. Unbanned some aspects of the press, unbanned political organisations, people are meeting freely for the first time in more than thirty years. To that extent there is some hope. He released those put on Robben Island 26 years ago and finally, Nelson Mandela.

But my friends, the misleading headlines around the world, "Mandela is free, Mandela is free", is not true. Mandela is out of jail, he is not free. APPLAUSE. Lesch is free to live and play in Poland, send his child to any school in Poland, vote in Poland, running for office in Poland. Lesch is free, Mandela is out of jail. He is not free to move where he chooses, because the pillars of apartheid have not yet been touched. The Group Areas Act is in place and on the lawbooks, he is not free to use the bathroom at the shores because of the Separate Amenities Act, he is not free to vote. He was a strange case of one single man who, by his suffering for the rightness of his cause, has suffered his way into power. He represents a man who survived the crucifixion and now the stone has been rolled away. It is the second coming of a suffering servant. In the real sense he was one man without a standing army, without title, without a position of his own, organisation of his own, without a gun, a missile or a plane has emerged with more votes than his own state president and more credibility than an entire government in the world, and yet, this one man with more votes than his president and more credibility than his government,

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does not have the right to vote.

The world must not stand idly by until Nelson Mandela is freed to live where he chooses, freed to educate his children where he chooses, freed to vote, freed to realise a new fair and free South Africa.

Lastly, Mr President, your nation's leader and my friend, be guided by this if you will: As you seek to govern a multi-party democratic formation, I suppose one major lesson history teaches us and it is this: If a matter is morally wrong, it cannot be politically right, and no matter how much power a given super-power may have at a given point in time, the colonisers had to give it up when they were morally wrong, the occupiers had to give it up when they were morally wrong. The empires had to give it up when they were morally wrong. If a matter is morally wrong, it cannot be politically right. There is another way of saying: Unless the Lord builds a house, they labour but they labour in vain. It will get rough sometimes, but just also remember as you did in exile, that just flap your wings with faith, God is the wind beneath your wings, and He promised that one day you will return home in full favour. He promised in His Word: "Weeping man, hold on, hold out, don't surrender, joy cometh in the morning", and this is that morning beyond Robben Island, this is that new Jerusalem that John saw. Joy has come this morning. I hear the Writer saying: "If My people will call by My name, humble themselves and pray and seek My face and turn from their wicked ways, then they will have heaven and God will heal their land."

So, long live Namibia, long live a non-racial democratic society, long live a great president, a statesman, Sam Nujoma. Thank you very much. APPLAUSE.

CHAIRMAN: Honourable members, as I have told you, he is a politician, a freedom fighter, a preacher and you have heard everything. I would like to thank him on your behalf. This was indeed a great day.

ADJOURNMENT OF ASSEMBLY

On the motion of the Chairman, the Assembly adjourned at 11h00

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
9 MARCH 1990

THE DEPUTY CHAIRMAN took the Chair and read Prayers.

APPROVAL: COAT OF ARMS

MR HAMUTENYA: Mr Chairman, I lay upon the Table the proposed Coat of Arms for the Republic of Namibia for consideration.

MR HAMUTENYA: Mr Chairman, may I also inform the House at this point that the working committee on the national anthem is continuing its work. The Subcommittee on the National Symbols met and had deliberations together with the working committee, but we have not been able to come up with what we can say is a suitable proposal. We would therefore like to suggest that we allow the work to go on beyond the 21st March. It seems quite obvious that we are not in a position now to produce for adoption by this House a national anthem which will be fitting for the needs of the occasion, for the birth of our Republic. So, we will have to adopt a theme and a melody to be sung on independence day.

So, the proposal is that we work out a theme befitting the occasion and adopt the theme to the melody of the African national anthem, "Sikulele Africa." If that is acceptable we would like to request the working committee to continue and to adopt a very short theme for the independence of Namibia.

Secondly, Mr Chairman, the committee which has been working on the flag and the coat of arms will continue to work to produce a National Seal.

MR KATJIUONGUA: Mr Chairman, through you I would like to request the chairman of the subcommittee to explain these things to the House in more detail. It might be of public interest.

CHAIRMAN: There is a request to explain the meaning of the symbols on the coat of arms to the House.

MR HAMUTENYA: I am not a specialist in heraldic rules of designing flags, coats of arms, seals and the rest, but all I can say is that the seal consists of the already

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adopted national flag of Namibia. It consists of the two oryx animals. The oryx are indigineous of Namibia and other parts of Southern Africa. It is an elegant animal, it is a very proud animal, it is a very brave animal. Not even a lion takes it on easily. That is the oryx. On top of the shield of the coat of arms, that is the part containing the flag; we see the fish eagle. The eagle represents far-sightedness. It is regarded as the king of the sky. It sees very far afield. It is a very difficult bird to catch or to kill because it sees far afield. So, we want to be a far-sighted nation.

At the bottom of it we have the Namib-sand, gold and yellow sand with our well-known welwitschia upon it. On top there, just between the shield and the band there is a ring of gold. The inscription at the bottom of the yellow background of the Namib-sand is unity of our nation, liberty and justice. In short that is what I learned about the designing of the coat of arms. I thank you.

CHAIRMAN: Do I therefore take it that this coat of arms is adopted with the unanimity that it deserves? Any objections?

AGREED TO.

MR MUDGE: Mr Chairman, I just want to ask you to explain to the meeting the procedure to be followed from now on to make this coat of arms legal.

CHAIRMAN: The procedure is simply, as agreed upon by the committee, that the coat of arms has been adopted today. However, it will go to the production line, but will not be in use until one minute after midnight on the morning of the 22nd. If there are any additions that the honourable members of the committee would like to make with a view to clarify that, I will welcome further clarification, but that is simply the procedure. It will be adopted by a separate act of parliament at a later stage.

MR HAMUTENYA: I would like to propose that we prepare a draft bill on the coat of arms to be ready for the 21st, to be passed by the majority in this House immediately after the swearing in of members of this House and transforming this House into the National Assembly. So, we do that on the 21st March and not later. The reason is that we have minister designates who wish to proceed with the use of the coat of arms, passports, and therefore it

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should become a law immediately on that date.

I would like to seize this opportunity to convey to the nation through the media here that the hoisting of the flag at certain places in town and elsewhere is illegal. It cannot be done. Anybody who is hoisting the flag now is engaging in illegality. It can only be hoisted after midnight on the 21st March. Thank you.

CHAIRMAN: I am also made to understand that Friday, March 16th will be the day on which the honourable members of this House will attach their signatures to the copy of the Constitution, and I am made to understand that this was a decision taken earlier on. So, Friday the 16th March there will be a meeting at 10 o'clock as usual in this very hall.

ADJOURNMENT OF ASSEMBLY

On the motion of the Deputy Chairman, the Assembly adjourned at 09h50.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
16 MARCH 1990

THE CHAIRMAN took the Chair and read Prayers.

SIGNING OF CONSTITUTION BY MEMBERS

CHAIRMAN: As honourable members are aware, this meeting was specifically called for one purpose only. We adopted the Constitution on the 9th February, which, I think, will be known as Constitution Day, but we agreed that at a subsequent date we shall sign the Constitution. It is a historic document and we are meeting today to do just that. I will ask the Secretary to circulate the Constitution so that you can sign where your name appears.

WHEREAFTER THE CONSTITUTION IS SIGNED BY MEMBERS OF THE ASSEMBLY.

CHAIRMAN: Members of the Constituent Assembly, we have now in the long process of constitution-making reached the apex and are now finished with drafting the Constitution of the Republic of Namibia.

ADJOURNMENT OF ASSEMBLY

On the motion of the Chairman, the Assembly adjourned at 10h35.
